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"What works?" revisited: new findings on criminal rehabilitation

JAMES Q. WILSON

FEW articles appearing in this magazine have been as widely reprinted or as frequently cited as Robert Martinson's "What Works?—Questions and Answers About Prison Reform," published in 1974. Its major conclusion has become familiar to almost everyone even casually interested in crime control programs: "*With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.*" For politicians as well as for scholars, the message seemed clear—nothing works. In fact, the article was careful to point out that there were, scattered through the 231 studies that were reviewed by Martinson and his co-workers, hints of *some* reductions in criminality for *some* kinds of offenders under *some* circumstances. But these hints did not constitute, even generously interpreted, a clear and consistent pattern of success on which a public policy might be based.

There was little new in the 1974 article. In 1967, R.G. Hood had published in Europe a review that concluded that different ways of treating offenders generally led to similar, and not very encouraging, results. A year earlier, Walter C. Bailey published in this country a survey of 100 evaluations of correctional treatment programs that led him to the judgement that "evidence supporting the

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efficacy of correctional treatment is slight, inconsistent, and of questionable reliability." Indeed, such gloomy findings go back at least 30 years. In 1951, Edwin Powers and Helen Witmer reported on the results of the ambitious Cambridge-Somerville Youth Study, begun in 1939 as an effort to prevent delinquency by an intensive counselling program. Despite high hopes, they had to conclude that, by any measure, boys randomly assigned to counselling were as likely as similar boys left on their own to run afoul of the law.

Unlike these earlier studies, the Martinson article—based on a massive volume he had prepared in collaboration with Douglas Lipton and Judith Wilks—created a sensation. Partly it was the times: It appeared in the early 1970's, after the optimism of the Great Society had been dashed and the enthusiasms of the 1960's had moderated, but when politicians were still searching desperately for some response to the widespread public fear of street crime. Martinson did not discover that rehabilitation was of little value in dealing with crime so much as he administered a highly visible *coup de grâce*. By bringing out into the open the long-standing scholarly skepticism about most rehabilitation programs, he prepared the way for a revival of an interest in the deterrent, incapacitative, and retributive purposes of the criminal justice system.

But it was not just the times. During the 1960's, there had developed in California a remarkable concentration of talent and energy devoted to finding and testing rehabilitation programs, especially ones designed to treat delinquents in the community. Marguerite Q. Warren, Ted Palmer, and others not only used advanced psychological testing to classify delinquents by personality type and employed skilled counsellors to provide intensive community supervision, they randomly assigned delinquents to the treatment and control groups in order to insure the best possible scientific evaluation of the results.

At first, these results were encouraging, so much so that the President's Commission on Law Enforcement and Administration of Justice, in its 1967 report to Lyndon Johnson, endorsed the Community Treatment Program (CTP) of the California Youth Authority, describing it as having reduced delinquency (as measured by parole revocation) from 52 percent among youth who were incarcerated before release to 28 percent among those given intensive counselling in the community.

The Martinson article was particularly critical of these claims. In their re-analysis of the California data, Lipton, Martinson, and Wilks concluded that Warren and her colleagues had substantially under-

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counted the number of offenses committed by the youth in the experimental community program. Apparently, probation officers assigned to these delinquents developed such close relations with their charges, and were so eager to see their program succeed, that they failed to report to the authorities a number of offenses committed by the experimentals, whereas youth assigned to the control groups had their offenses reported in the normal way by probation and parole authorities.

California counterattacks

Given the resources devoted to the California project and the publicity it had received, it is hardly surprising that its leaders counterattacked. Ted Palmer published in 1975 a rebuttal to the Martinson article, claiming that it overlooked or downplayed a number of success stories in the rehabilitation literature and that in particular it misrepresented the CTP. Palmer conceded that the youth in the experimental program had a number of offenses overlooked by counsellors, but argued that these were largely minor or technical violations, many of which were detected simply because the youth were under closer observation and some of which involved merely the failure to participate regularly in the intensive supervision program. Moreover, the Martinson review ended in 1967; if it had continued through 1973, Palmer said, the differences between experimentals and controls, at least for serious offenses, would have been clear.

Martinson responded vigorously to this challenge, and the battle was joined. In the midst of the verbal pyrotechnics of Palmer and Martinson—they were nothing if not spirited adversaries—a new and, as it turned out, more weighty voice was heard. Paul Lerman, a Rutgers sociologist, published a book-length evaluation of the CTP (as well as of the California probation subsidy program) in which he concluded, after a painstaking analysis of the published data, that "the CTP did not have an impact on youth behavior that differed significantly from the impact of the control program."[1] Moreover, the "community" focus of the experimental program turned out to be somewhat exaggerated—in fact, the great majority of experimental youth were placed in detention at least once and many were detained repeatedly in order to maintain control over them. Indeed, the youth in the experimental "community" program

[1] Paul Lerman, *Community Treatment and Social Control* (Chicago: University of Chicago Press, 1975), p. 67.

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were *more* likely to be sent to detention centers than the control group supervised by regular parole officers. Finally, Lerman found strong evidence that, though the CTP had tried to match experimental and control groups by randomly assigning youth to each, over the many years the program operated the two groups began to differ markedly in their characteristics as persons dropped out of the program for one reason or another. In particular, the experimental group came to be composed disproportionately of persons who were older, had higher IQ's, and were diagnosed as "neurotic" (rather than as "power-oriented"). This intriguing finding, largely buried in an appendix to the Lerman book, raises issues to which we shall return presently.

Lerman had made many of these points earlier, in a 1968 article; he made them more elaborately in the 1975 book. Curiously, Palmer, who continued to protest against the Martinson article, appears to have taken little notice, at least publicly, of the Lerman criticisms. Palmer's book-length attack on Martinson and his reassertion of the claims of the CTP appeared in 1978; there is no mention of Lerman in it.[2]

Enter the National Research Council

While the debate in correctional journals raged, the public view, insofar as one can assess it from editorials, political speeches, and legislative initiatives, was that Martinson was right. Because of this widespread belief that "nothing works," the National Research Council, the applied research arm of the prestigious National Academy of Sciences, created in 1977 a Panel on Research on Rehabilitative Techniques, chaired by Professor Lee Sechrest, then of the Department of Psychology of Florida State University. The Panel was charged with reviewing existing evaluations of rehabilitative efforts to see if they provided a basis for drawing any conclusions about the effectiveness of these efforts. Its first report—on efforts to rehabilitate in correctional institutions—was issued in 1979; a second report, on community rehabilitation, will appear later.

Owing to the importance in the public debate of the review by Lipton, Martinson, and Wilks (LMW), that book was made the focus of the Panel's attention.[3] In addition, the report examined

[2] Ted Palmer, *Correctional Intervention and Research* (Lexington, Mass.: D.C. Heath/Lexington Books, 1978).

[3] Douglas Lipton, Robert Martinson, and Judith Wilks, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies* (New York: Praeger, 1975).

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reviews that analyzed studies appearing after 1968, the cutoff date for the LMW review. Among the papers commissioned by the Panel was a detailed re-analysis of a sample of the studies analyzed by LMW, carried out by two scholars not identified with the on-going debate, Stephen Fienberg and Patricia Grambsch.

The conclusion of the Panel is easily stated: By and large, Martinson and his colleagues were right. More exactly, "The Panel concludes that Lipton, Martinson, and Wilks were reasonably accurate and fair in their appraisal of the rehabilitation literature." If they erred at all, it was in being overly generous. They were sometimes guilty of an excessively lenient assessment of the methodology of a given study. Moreover, the evaluations published since 1968 provide little evidence to reverse this verdict. For example, David F. Greenberg's 1977 review of the more recent studies comes to essentially the same conclusion as Martinson. S.R. Brody's survey in England on the institutional treatment of juvenile offenders agrees.

The Panel looked in particular at Palmer's argument that nearly half the studies cited by Martinson showed a rehabilitative effect. The Panel was not persuaded: "Palmer's optimistic view cannot be supported, in large part because his assessment accepts at face value the claim of the original authors about effects they detected, and in too many instances those claims were wrong or were over-interpretations of data. . . ." In any event, "we find little support for the charge that positive findings were overlooked."

The conclusion that Martinson was right does not mean that he or anyone else has proved that "nothing works," only that nobody has proved that "something works." There is always the chance, as the Panel noted, that rehabilitative methods now in use but not tested would, if tested, show a beneficial effect and that new methods yet to be tried will prove efficacious. (One such method will be discussed in a moment.)

Are some offenders amenable to treatment?

One unresolved issue is whether certain kinds of offenders are more amenable to rehabilitation than others. If this is the case, and if the amenable subjects are mixed together in a treatment group with non-amenable ones, then any reductions in criminality among the former might be masked by increases in criminality among the latter; the average (and misleading) result would be, "no change."

This view has been vigorously advanced by Daniel Glaser, among others. Writing in 1973, a year before the Martinson article appeared,

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he pointed to evidence from a variety of evaluative studies suggesting that certain kinds of offenders were especially amenable to rehabilitation. They tended to be persons who could easily communicate, who had not found their prior criminal career to be especially rewarding, and who had not been greatly disappointed by their efforts to find legitimate alternatives to crime. The CTP, for example, made explicit use of a psychological classification scheme designed to differentiate among delinquents on the basis of their "interpersonal maturity level" and their particular mode of behavior. One such group was classified as having a relatively high level of maturity, by which is meant the members had an internalized set of standards and some regard for the opinions of others, but displayed as well neurotic tendencies—either feelings of guilt and anxiety or a proclivity to "acting-out." The interpretation of the CTP data by Glaser, Palmer, and others was that these anxious, neurotic, guilt-stricken delinquents benefitted substantially from intensive counselling. Recognizing the criticisms already levelled by Lerman (in his 1968 article) at the CTP, Glaser felt that even allowing for counsellor bias the neurotics did substantially better in the treatment groups than they did when left alone in the control groups. Moreover, Glaser has argued that Lerman himself neglected the long-term effects of treatment on different types of delinquents.

If this is true, then those studies which show no change among treated offenders may include not only some "amenables" who commit less crime *but some non-amendables who actually commit more crimes as a result of the treatment.* And this is exactly what Palmer believed he found in the CTP data. In his 1978 book, he showed the monthly arrest rates for two kinds of offenders—the "conflicted" (by which he apparently means "neurotic") and the "power-oriented" (by which he seems to mean those delinquents who lack an internalized set of conventional standards and either manipulate others or identify with the norms of a deviant group). Neurotic delinquents in the treatment group had a lower monthly arrest rate than neurotics in the control group, both during the early stages of the program and four years after discharge. "Power-oriented" offenders in the treatment groups, on the other hand, had a *higher* arrest rate than the power-oriented controls four years after discharge. Glaser had surmised that this increase in criminality among power-oriented delinquents in the treatment program arises because they learn from it how to manipulate their counsellors, obtain favors, win early release, and generally "con" the system. "Treating"

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such persons—at least by means of verbal therapy—apparently makes society worse off.

An earlier study by Stuart Adams provides some confirmation for this point of view. In 1961 he described the "Pilot Intensive Counselling Organizations" (PICO) in California, aimed at reducing delinquency among older juvenile offenders. The eligible youth were first classified as "amenable" or "non-amenable" by the persons running the project. (Exactly how they reached these judgments is not clear.) Once classified, they were then randomly assigned to either a treatment or control group. (The treatment consisted of individual counselling sessions, once or twice a week for about nine months, carried on inside a correctional institution.) After nearly three years of observation, Adams discovered that the amenable delinquents who had been treated were much less likely than amenable delinquents who had not been treated to be returned to custody. On the other hand, delinquents judged non-amenable who were given counselling did much worse—indeed, they were *more* likely to be returned to jail than the non-amenables who had *not* been treated. *In short, if you are amenable, treatment may make you less criminal; if you are not, treatment can make you more criminal.* Adams found that the delinquents judged to be amenable were "bright, verbal, and anxious." These characteristics are similar to those of the neurotics in the CTP.

This conclusion is consistent with a good deal of evidence about the effects of psychotherapy generally. Changing delinquents is not fundamentally different from changing law-abiding people: "Crime," after all, is not a unique form of behavior; it is simply behavior that is against the law. The illegality of the behavior is no trivial matter, but illegality alone does not differentiate one action from many similar actions. For example, many (perhaps most) offenders tend to do poorly in school, to have emotional problems, to find it difficult to get along with parents and friends, and to drink a good deal of alcohol. They are generally a mess. But poor school work, strained peer relations, emotional stress, and drinking liquor are not illegal.

Psychologists have long argued over whether any form of therapy will help any kind of problem. H.J. Eysenck, in a famous pair of articles published in 1952 and 1965, claimed that there was little evidence that therapy did anybody much good. He was (and is) the Robert Martinson of psychotherapy. Of late, psychologists have questioned the sweeping nature of Eysenck's claim. Mary Lee Smith and Gene V. Glass published in 1977 a comprehensive review of

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nearly 400 controlled evaluations of therapy and counselling and concluded that the client was often better off being treated than not. However, they noted that the improvements were generally with respect to such matters as fear and self-esteem and much less often with respect to such matters as "adjustment" (under which heading, of course, one finds most criminal behavior). Smith and Glass also tried to measure what factors made some subjects more amenable to therapy than others. They were able to identify two statistically significant ones: whether the therapist resembled the client, and the IQ of the client. Brighter clients did better than duller ones.

Similarly, if we are to believe Lerman, the brighter (and more neurotic) delinquents remain in the CTP program longer than those with the opposite characteristics; thus, any improvement measured by Palmer in their law-abidingness may result either from their greater receptivity to therapy, or from their tendency over time to outnumber the more delinquent-prone youth, or both.

The possibility that some persons are amenable to criminal rehabilitation is intriguing but it is not yet clear how much to make of it. The National Research Council Panel took note of the issue but remains skeptical that we have any clear understanding of it. The CTP, the major source of claims about amenability, is methodologically flawed. The PICO project did not define amenability with any rigor. Classifying a criminal as "amenable" may only mean that a therapist has a good hunch as to who will cooperate with the program. But if the therapist cannot communicate to others the basis for that hunch or provide a clear explanation of its rationale, it is hard to see how it can be used routinely as the basis for classifying and treating offenders. Moreover, some difficult legal and ethical issues arise. Suppose we are able to differentiate, accurately, amenable from non-amenable offenders. Suppose further that the treatment from which the amenables will benefit is less restrictive, more benign, and shorter in duration than the conventional punishment to which non-amenables will be assigned. Should we allow the criminal justice system to be "nicer" to "amenable" offenders than to non-amenable ones, even though their offenses and prior records may be identical. (Of course, it may also turn out that the rehabilitative program is felt by the recipients to be more onerous than doing "straight time"; the issue, however, remains the same.)

Nevertheless, the possibility of identifying amenable subjects and aiming programs at them that work is sufficiently attractive as to merit intensive new research. Someone has even coined a short-

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hand term to describe what we now suspect are the amenable subjects of therapy: YAVIN (young, anxious, verbal, intelligent, neurotic).

Recidivism, rates, and restrictiveness

The most dramatic new argument in the continuing debate over rehabilitation, however, comes from two authors who do not, at first glance, appear to be writing about rehabilitation at all. Charles A. Murray and Louis A. Cox, Jr., members of a private research organization, were retained to find out what happens to chronic delinquents in Chicago who are confronted by sanctions of varying degrees of restrictiveness.[4]

The Chicago authorities wanted to know if any of the programs offered in that city—ranging from commitment to a conventional juvenile reformatory, to newer programs that left the delinquent in the community or sent him to a wilderness program—changed the rate at which delinquents committed offenses. Such studies have been done many times, usually with the negative results reported by Martinson. But Murray and Cox redefined the outcome measure in a way that seems to make a striking difference. Until now, almost all students of recidivism "rates" or rehabilitation outcomes have measured the success or failure of a person by whether or not he was arrested for a new offense (or was convicted of a new offense, or had his parole revoked) after leaving the institution or completing the therapeutic program. "Success" was an either-or proposition: If you did not (within a stated time period) get into trouble again, you were a success; if you did get into trouble—*even once*—you were a "failure." Though the evaluators of rehabilitation programs typically speak of "recidivism rates," in fact they do not mean "rate" at all—they mean "percent who fail." More accurately, they use "rate" in the sense of "proportion," as in the "birth rate" or the "tax rate." But there is a different meaning of rate: the *frequency* of behavior per unit of time. Even a cursory glance through the studies reviewed by Lipton, Martinson, and Wilks reveals that almost all of them use "recidivism rate" to mean "the proportion who fail."

It was Murray's and Cox's happy thought to use rate in the sense of frequency and to calculate how many arrests per month were

[4] Charles A. Murray and Louis A. Cox, Jr., *Beyond Probation: Juvenile Corrections and the Chronic Delinquent* (Beverly Hills, California: Sage Publications, 1979).

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charged against a given group of delinquents before and after being exposed to Chicago juvenile treatment programs, and to do so separately for each kind of program involved. They examined three groups of youth.

The first was composed of 317 serious delinquents. They had been arrested an average of 13 times prior to being sent to the Department of Corrections, which was when Murray and Cox first started to track them. They were young—the average age was 16—but active: They had been charged with 14 homicides, 23 rapes, over 300 assaults and 300 auto thefts, nearly 200 armed robberies, and over 700 burglaries. The boys entered the study by having been sentenced by the court to a state correctional institution where they served an average of about ten months. Murray and Cox followed them for (on the average) 17 months after their release.

By the conventional measure of recidivism, the results were typically discouraging—82 percent were rearrested. But the *frequency* with which they were arrested during the follow-up period fell dramatically—the monthly arrest rate (i.e., arrests per month per 100 boys) declined by about *two-thirds*. To be exact, the members of this group of hard-core delinquents were arrested 6.3 times each during the year before being sent away but only 2.9 times each during the 17 months on the street after release.

The second group consisted of 266 delinquents who were eligible to go to a state reformatory but who instead were diverted to one of several less custodial programs run by the Unified Delinquency Intervention Services (UDIS), a Cook County (Chicago) agency created to make available in a coordinated fashion non-institutional, community-based programs for serious delinquents. Though chosen for these presumably more therapeutic programs, the UDIS delinquents had criminal records almost as severe as those sent to the regular reformatories—an average of over 13 arrests per boy, of which eight were for "index" (i.e., serious) offenses, including nine homicides, over 500 burglaries, and over 100 armed robberies. Nonetheless, since these youth were specially selected for the community-based programs, one would expect that in the opinion of probation officers, and probably in fact, they represented somewhat less dangerous, perhaps more amenable delinquents.

Despite the fact the UDIS group may have been thought more amenable to treatment, the reduction in their monthly arrest rates was *less* than it had been for the group sent to the reformatories (about 17 percent less). In general, UDIS did not do as well as the regular Department of Corrections. Even more interesting, Murray

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and Cox found that *the more restrictive the degree of supervision practiced by UDIS, the greater the reduction in arrest rates.* Youths left in their homes or sent to wilderness camps showed the least reduction (though some reduction nonetheless); those placed in group homes in the community showed a greater reduction; and those put into out-of-town group homes, intensive-care residential programs, or sent to regular reformatories showed the greatest reduction. If this is true, *it implies that how strictly the youth were supervised, rather than what therapeutic programs were available, had the greatest effect on the recidivism rate.*

Ordinarily, we do not refer to the crime-reduction effects of confinement as "rehabilitation." Technically, they are called the results of "special deterrence" ("special" in the sense that the person deterred is the specific individual who is the object of the intervention, and not the general delinquent population). "Rehabilitation" usually refers to interventions that are "nice," benevolent, or well-intended, or that involve the provision of special services. A psychologist might say that rehabilitation involves "positive reinforcements" (such as counselling) rather than "negative reinforcements" (such as incarceration). Indeed, the National Research Council Panel defines rehabilitation as the result of "any planned intervention" that reduces further criminal activity, "whether that reduction is mediated by personality, behavior, abilities, attitudes, values, or other factors," provided only that one excludes the effects of fear or intimidation, the latter being regarded as sources of special deterrence.

Although the distinction has a certain emotional appeal, it makes little sense either scientifically or behaviorally. Scientifically, there is no difference between a positive and negative inducement; behavioral psychologists long ago established that the two kinds of reinforcements have comparable effects. (It is not generally true that rewards will change behavior more than punishments, or vice versa.) Behaviorally, it is not clear that a criminal can tell the difference between rehabilitation and special deterrence if each involves a comparable degree of restriction. Rehabilitation can (and usually does) involve a substantial degree of coercion, even of intimidation ("be nice or you won't get out," "talk to the counsellor or stay in your cell," "join the group discussion or run the risk of being locked up"). Behavior-modification therapy can involve the simultaneous use of positive reinforcers ("follow the rules and earn a token") and negative ones ("break the rules and lose a token"). It might help the discussion of offender-oriented programs if the

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distinction between rehabilitation and special deterrence were collapsed.

Two questions

The real issue raised by the Murray-Cox study is not, however, what to call the effect they observe, but whether they have actually observed any effect at all. A number of criticisms have been made of it, but two are of special importance. First, does the decline in arrests indicate a decline in actual criminality or merely an increase in skill at avoiding apprehension? Second, if there is an actual decline in criminality, might this not be explained by the maturation of youth—that is, growing out of crime as they become older? Andrew C. Gordon, Richard McCleary, and their colleagues made these and other criticisms in response to a preliminary report of the Murray-Cox findings. In their later, book-length treatment of the Chicago project, Murray and Cox responded.

The second criticism seems the easiest to answer. Murray and Cox were able to show that the decline in rearrest rates existed for all incarcerated serious delinquents regardless of age. As an additional check, the authors examined a third group—nearly 1,500 youth born in Chicago in 1960 and arrested at least once by the Chicago Police Department before their 17th birthdays. Since this group was chosen at random from all arrested youth of the same age, it naturally is made up primarily of less serious offenders. Indeed, only 3 percent of this group was ever referred to UDIS or the Department of Corrections. When the monthly arrest rates for this group were examined, the data showed a more or less steady increase throughout the teenage years. Being arrested or being placed on probation had no apparent effect on subsequent delinquency. By all the tests they used, therefore, the decline in arrest rates for those delinquents given strict supervision cannot be explained by the fact that they were simply getting older.

The other criticism is harder to answer. Strictly speaking, it is impossible to know whether arrest data are a reasonable approximation of the true crime rate. No one argues, of course, that every crime results in an arrest. All that is at issue is whether a more or less constant fraction of all crimes result in arrests. There are two possibilities—either having been arrested before draws police attention to the boy (he is "stigmatized" or "labeled"), thus making him *more* likely to be arrested for subsequent crimes, or the arrest and subsequent punishment increases his skills at avoiding detec-

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tion (the system has served as a "school for criminals"), thus making him *less* likely to be arrested for a given offense.

Now it is obvious that the first of these two possibilities—the "labeling" effect of being arrested—cannot be true, for, we have seen, delinquents who are placed under supervision have their subsequent arrest rates *decline*. If the police "pick on" previously arrested youth, they either do so without making an arrest (by keeping an eye on "troublemakers," for example) or they try harder to arrest them but find the youth are not committing as many crimes as before.

The other possibility—that boys become skilled at avoiding arrest—is impossible to disprove, but Murray and Cox raise some serious questions as to whether this gain in skills, if it occurs at all, could explain the decline in arrest rates. Perhaps their most telling argument is this: One must not only believe that correctional institutions are "schools of crime," one must believe they are such excellent schools that they produce a two-thirds gain in arrest-avoiding skills. This would make reformatories and group homes the most competent educational institutions in the country, since no one has yet shown that conventional schools, with the best available educational technology, can produce comparable gains in learning non-criminal skills. And all this must be accomplished within the ten-month period that is the average length of detention. It is still possible, of course, that the "schools of crime" hypothesis is true, but it requires one to make some heroic assumptions in order to sustain it: that large numbers of boys learn more during ten months in a reformatory than they learn in ten years on the street; that the great majority, despite their statements to the contrary made to interviewers, increase their commitment to crime as a way of life (rather than as an occasionally profitable activity) as a result of incarceration; and that the object of their efforts when back on the street is to employ their sharpened skills at avoiding apprehension while committing relatively unprofitable crimes rather than attacking more profitable (and riskier) targets.

Though Murray and Cox make a persuasive case for the validity of their findings, it cannot be taken as a conclusive study. For one thing, we would like to know what happens to these delinquents over a much longer period. Most studies of rehabilitation suggest that any favorable effects tend to be extinguished by the passage of time (though such extinction usually appears within the first year). We would also like to know more about the kinds of offenses for which these persons were arrested, before and after court interven-

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tion (perhaps they change the form of their criminal behavior in important ways). And above all, we would like to see such a study repeated in other settings by other scholars. It may even be possible to do this retrospectively, with data already in existence but never before analyzed using frequency of offending (rather than proportion of failures) as the measure of outcome.

In fact, long before the Murray-Cox study, LaMar T. Empey and Maynard L. Erickson had reported on the Provo Experiment in Utah, an effort to reduce delinquency that was evaluated by arrest rates before and after treatment—the same outcome measure used by Murray and Cox (indeed, the latters' book contains a foreword by Empey). The Provo Experiment was, in principle at least, an even better test of changing recidivism rates than the Chicago project because the former, unlike the latter, randomly assigned delinquent boys to either treatment or control groups and kept detailed records (in addition to before-and-after measures) of what actually happened to the boys in the treatment programs. The experimental program was community-based, but, unlike conventional probation or even group homes, involved an intensive level of participation in a supervised group discussion program, absence from which was promptly penalized by being locked up. The program was in time killed by community opposition (many persons thought it excessively punitive, others quarreled over who should pay for it). The four years worth of data which could be gathered, however, indicate that there have been substantial reductions in arrest rates that cannot be explained by maturation or social class differences for all boys. This was true of both those incarcerated and those left in the community, with the greatest reductions occurring among boys in the experimental programs.[5] Though open to criticism, the Provo data provide some support for the view that, if one measures offense *frequency*, some kinds of programs involving fairly high degrees of restrictiveness and supervision may make some difference.

Thoughts for the future

The Murray-Cox and the Empey-Erickson studies are important, not only because they employ rates rather than proportions as the outcome measure, or even because they suggest that something might work, but also because they suggest that *the study of deterrence and the study of rehabilitation must be merged—that, at least*

[5] LaMar T. Empey and Maynard L. Erickson, *The Provo Experiment* (Lexington, Mass.: D.C. Heath/Lexington Books, 1972).

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for a given individual, they are the same thing. Until now, the two issues have been kept separate. It is not hard to understand why: Welfare and probation agencies administer "rehabilitation," the police and wardens administer "deterrence"; advocates of rehabilitation think of themselves as "tender-minded," advocates of deterrence see themselves as "tough-minded"; rehabilitation supposedly cures the "causes" of crime, while deterrence deals only with the temptations to crime; psychologists study rehabilitation, economists study deterrence. If Murray-Cox and Empey-Erickson are correct, these distinctions are artificial, if not entirely empty.

The common core of both perspectives is, or ideally ought to be, an interest in explaining individual differences in the propensity to commit crime, or changes in a single individual's propensity over time. The stimuli confronting an individual can rarely be partitioned neatly into things tending to produce pain and those likely to produce pleasure; most situations in which we place persons, including criminals, contain elements of both. If explaining individual differences is our object, then studying individuals should be our method. Studies that try to measure the effect on whole societies of marginal changes in aggregate factors (such as the probability of being imprisoned, or the unemployment rate) are probably nearing the end of the line—even the formidable statistical methodologies now available are unlikely to overcome the gross deficiencies in data that we shall always face.

Policy makers need not embrace the substantive conclusions of Murray and Cox (though it is hard to see how they could reasonably be ignored) to appreciate the need to encourage local jurisdictions to look at the effect of a given program on the rate of behavior of a given set of offenders. If they do, they may well discover, as Murray and Cox feel they have discovered in Chicago, that for the serious, chronic delinquent, the strategy of minimal intervention —probation, or loosely supervised life in the community—fails to produce any desirable changes (whether one calls those changes deterence or rehabilitation), whereas tighter, more restrictive forms of supervision (whether in the community or in an institution) may produce some of these desired changes, or at the very least not produce worse delinquency through "labeling" or "stigmatization." It is hard to imagine a reason for not pursuing this line of inquiry.

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Christian schools versus the I.R.S.

PETER SKERRY

DECLINING public school enrollments have in recent years been accompanied by the sustained growth of non-public schools. Indeed, since 1975 the latter have registered enrollment gains of 1 percent or more each year. But among these the fastest growing—and least understood—are the schools sponsored by fundamentalist Protestants. Christian schools, as they are typically called, have been described by one official of the now-defunct Office of Education as "the fastest growing segment in private education today." At the same time, because these schools typically shun the inquiries of outside organizations, we have no hard evidence on how widespread they are. Nevertheless, data presented in a recent study sponsored by the National Institute of Education suggest that over the decade from 1965 to 1975 Christian school enrollments may have trebled. The same study goes on to estimate total national enrollments in fundamentalist-oriented schools at 900,000—or about one-fifth of all non-public school enrollments.

Though most prevalent in the South, where the traditions of fundamentalism are the strongest, Christian schools are to be found in all parts of the country. There are, for example, some 60 of them scattered across Wisconsin. In 1979 alone, 89 new schools opened

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in New York State. Christian schools are also found in rural Ohio and Vermont, as well as Southern California. Nevertheless, their prevalence in the South and their emergence around the time of public school desegregation have meant that Christian schools operate under a cloud of suspicion. They are labeled "segregation academies" by those who insist they were established to avoid desegregation. There is a marked tendency to dismiss the sincerity of the people involved. As Clarence Mitchell, former Washington lobbyist for the NAACP, puts it: "Every school that's been started to evade desegregation has called itself Christian. That's not my idea of being Christian." This view received its fullest expression in August 1978 when the Internal Revenue Service proposed affirmative-action guidelines intended to revoke the tax-exempt status of these schools. The furor in response to these proposals compelled the IRS to hold three days of stormy hearings in Washington in December 1978. The agency received over 120,000 letters of protest. And as one agency official put it: "The response is more than we've ever received on any other proposal." Eventually Congress was drawn into the fracas. It held its own hearings, and by the fall of 1979 had enacted legislation that blocked—at least temporarily—implementation of the guidelines. For the present, then, the threat of these proposals has been halted; but the misapprehensions informing public policy toward Christian schools persist and have yet to undergo dispassionate scrutiny.

During February 1979, I visited Christian schools scattered across the central Piedmont region of North Carolina for 17 days of observation and conversation with parents, students, and ministers on all sides of the issue. My experiences indicate that skepticism toward the religious orientation of these schools is altogether unwarranted, and furthermore, that the effort to reduce their emergence to a matter of racism is a gross oversimplification.

Christian schools in North Carolina

Some Christian schools operate independently of any specific congregation, but for most this does not seem to be the case. And certainly all that I visited in North Carolina were founded and operated by local churches. In most cases the congregations were in existence several years before the school was started, though in one or two instances the church and school began at the same time. Most of the schools I visited were started within the past ten years, although a couple are considerably older. In many ways the bound-

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ary is blurred between church and school. Even the most established schools share some facilities with the sponsoring churches, and frequently the school principal is the pastor, or a young ordained minister who serves as the pastor's assistant. On paper, the Christian school typically does not exist as a separate, incorporated entity, but rather is headed by the same board of deacons as the congregation as a whole.

Like the congregations that sponsor them, Christian schools are generally modest in size. The average in North Carolina is about 200 students, though some are as small as 30 or 40 and a couple as large as 800. These figures include all age groups, for the typical Christian school in North Carolina and elsewhere includes all grade levels. Moreover, all the schools I visited, and apparently most in North Carolina, provide day-long child care for preschoolers—in some cases infants as young as six months—as well as after-school care for school-age children. North Carolina has one of the highest rates of female labor-force participation, and the preachers who run these schools view child care as an important part of their ministry.

The facilities offered by the schools vary with the age and prosperity of the congregation. One or two are housed in million-dollar plants that rival most public school facilities. But the typical school is much more modest, housed in one or two buildings adjacent to the church, or sharing quarters with the church itself. In basketball-conscious North Carolina, a gym is a top priority and probably most expensive single undertaking of any school, and all the schools I visited have or anticipate building one. Some schools are housed in neat brick buildings complete with lawns and shrubs, but others are built on concrete slabs with corrugated metal walls and roofs, giving them a rough, unfinished appearance. Inside the typical school the furniture is adequate but second hand; the student's desks and bookshelves are constructed of plywood and obviously the work of some volunteer carpenter. There is generally no bell system, and the clocks on the walls come from someone's kitchen. Home-made curtains hang in the windows. Like classrooms everywhere, the walls are covered with the letters of the alphabet, exemplary work, drawings, and posters—as well as Bible quotations. The dominant impression that remains after visits to several such schools is that while they may lack the professional air of modern school buildings with designer-coordinated color schemes and expensive equipment, they do feel pleasantly homey and non-institutional.

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Independent Baptist congregations

By far the most salient characteristic of the schools I visited is that they are operated by independent Baptist congregations. In this as in most other respects they are typical of Christian schools throughout North Carolina and, indeed, the nation. This is an important point frequently ignored in the debate over these schools. When critics have bothered to take the movement's religious orientation seriously, they have been content to describe it as "fundamentalist." This is of course true, but it neglects to explain the predominance of Baptists in the Christian schools movement.

Throughout their history Baptists have been fiercely protective of their right to practice their beliefs free of outside interference. Their origins can be traced to the social and political turmoil of sixteenth and seventeenth-century England when, along with the Puritans and Quakers, Baptists formed part of a generalized opposition to the state-established Church of England. At a time when temporal rulers across Europe were imposing their personal religious beliefs on their subjects, the Baptists demanded complete separation of church and state. As their name suggests, they vehemently opposed infant baptism, which they viewed as the device by which unwitting souls were conscripted into state churches, and they insisted upon adult baptism as the free acceptance of Christ by the fully-informed individual. Many Baptists came to America in search of the religious liberty they were denied in their homeland. But their struggle with state authority was to continue. Roger Williams battled with the elders of the Massachusetts Bay Colony and was finally forced to flee to Rhode Island, where in 1639 he formed what is generally regarded as the first Baptist church in America. In the South, Baptists gained an early foothold in North Carolina, which served as a refuge for dissenters fleeing the established Anglican Church of Virginia.

Unwilling to grant authority over their religious beliefs to political rulers, Baptists have been equally adamant about ceding their religious freedom to church officials. Throughout their history Baptists have been fervent congregationalists, insisting that the ultimate and sole authority over church theology and affairs rests not with any hierarchy but with the members of each congregation. This is perhaps the basic distinction between the Baptists and their longtime rival as the church of the common man, the Methodists, who are organized along more rigid, hierarchical lines and have not played an important role in the Christian schools movement.

In recent years, the Southern Baptist Convention, for decades

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little more than a consortium of autonomous congregations to raise funds for missionary work, has presented a challenge to such notions of Baptist congregationalism. As the Convention has edged ever so slightly toward the Protestant mainstream in its theology, and simultaneously begun to present itself as a denomination-wide organization representing all Baptists, some congregations have reasserted traditionalist values and split off from the Convention, declaring themselves "independent Baptists." The sentiments underlying this schism are suggested by the words of one mother reared in a "regular" Baptist church: "I read in the newspaper that the Southern Baptist Convention just endorsed the ERA. Now, no one in the Convention ever asked me how I feel about the ERA. Who told them they could speak for all Baptists?" This woman now belongs to a small independent Baptist church near Charlotte.

Implicit in this notion of congregationalism is the democratic ethos that pervades all church activities. Nearly every decision affecting an independent Baptist congregation, after approval by the church deacons, is brought up for a vote before the entire congregation. The decision to buy a new church piano or to start a school would be discussed and voted on by those present at Sunday morning services. And once a year the church's budget, including the pastor's salary and expenses, is brought up before the congregation for discussion and approval.

Sunday morning services are clearly the high point of the week, but there are several other well-attended activities. Sunday mornings begin with Bible study for adults and children. Later that day the congregation reassembles for evening services. During the week most members attend Wednesday night services. Thursday is visitation night, when members visit those who have been ill or unable to come to services. One evening a week is devoted to choir practice, and Friday to church-league athletic competition. In addition to enthusiastic participation in these organized activities, a spirit of eager voluntarism pervades these congregations. Generally too poor to hire outside help, they rely on member initiative to mow the lawn, paint the trim, sew the curtains, and in many instances construct the church itself. A good example of what I'm talking about occurred when, during my visit, a freak storm dumped a foot of snow over central North Carolina. The next morning—a Sunday—several families arrived unbidden to shovel out the church grounds.

Such voluntarism is not just a matter of sociability or community spirit; it springs from deeply held religious beliefs. Theologi-

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cally, independent Baptists are similar to other fundamentalist denominations in that they believe in the Bible as literally the word of God, accepting the biblical account of creation and vehemently rejecting any hint of the theory of evolution. Most believe we are now in the reign of the anti-Christ, described in the Book of Daniel as preceding the imminent return of Christ. In preparation for that day of judgment these Baptists observe a "principal of separation" that requires them to reject such "wordly" habits as tobacco, alcohol, drugs, card playing, gambling, dancing, coed swimming, listening to rock music, going to movies, and in some cases watching television. In some ways they resemble the Amish and Mennonites, with whom they share a literal interpretation of the Bible and extremely conservative social views. But unlike these other groups, the independent Baptists have chosen to live and proselytize in the secular world. As they frequently put it, they live in this world—but are not of it. All the congregations I visited enthusiastically contribute to the support of missionaries scattered all over the world, many of whose pictures are proudly displayed on the walls of the church.

Thus, for a good many of the families I met, the congregation is the focus of their social as well as spiritual lives. Because they have a say in its direction and perhaps because the congregations are rather small, members feel their contributions—or lack thereof—really make a difference. As one young mother explained to me, "If we didn't tithe, there'd be a hole in the budget." This sense of efficacy and responsibility is not easily found in many institutions today. The Lamar Society, a group of Southern liberals frankly critical of Christian schools, makes the same observation in its study, *The Schools That Fear Built*:

> A local fundamentalist church . . . is both homogeneous and highly stable. It is the only organization which its members control at a time when they feel government institutions are out of control. It is often the only structure they trust and certainly the one in which they feel most comfortable, since much of their social as well as their spiritual life revolves around it.

A typical Christian school

As an integral part of this kind of community of faith, it is not surprising that fundamentalist religious and social values pervade these schools. The day begins with prayer, and pledges to both the American and the blue-and-white Christian flag. Each class begins

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with prayer, and meals with grace. School-wide chapel meets once or twice a week; and although Bible study is only one part of the curriculum, all subjects are taught from a "Christian perspective." In contrast to what is continually referred to as the "secular humanism" pervading the public schools, these schools emphasize the essential depravity of man and the absolute necessity of accepting Christ for salvation. No effort is spared in rooting out all traces of the secular humanist inclination to place man rather than Christ at the center of all human endeavor. Textbooks are scrutinized for objectionable material—for example, the new "nonsexist" reading materials are as offensive to these fundamentalists as science texts containing evolutionary theory. For a while these schools used older editions of public school texts, but as these grow increasingly scarce, they are turning to Christian publishing houses.

One of the most distinctive features of these schools is the strict discipline code. Each school I visited had a written list of rules and regulations backed up by threat of corporal punishment or expulsion. Insubordination or disruptive behavior of any sort is simply not tolerated. Even in the elementary grades, youngsters must stand when addressing teachers and use "sir" or "ma'am." It goes without saying that students are forbidden to smoke, use drugs, listen to rock music, go to the movies, or dance. Instead of a prom there is a senior banquet. And as for boy-girl relations, even hand-holding is prohibited.

Each school also has a detailed dress code, calling over and over for "modesty" and "good taste." Girls must not wear makeup or pants; other strictures prohibit long hair, sideburns, moustaches, beards, tank tops, blue jeans, bell bottoms, tie-dyed clothing, male jewelry, sandals, or stenciled T-shirts.

It is hard to read such a list and not feel that these schools must be full of rebellious youngsters and obsessive adults. But this is not at all the case. After all, these rules are merely the reflections of everyone's values, teachers and parents alike. Willingness to abide by them is the primary admission criterion, much more important than the academic one. As a result the interaction between teachers and students is marked not by fear and intimidation but by mutual respect and friendliness. Students of all ages are well behaved without anything like the constant surveillance so necessary in the public schools. Even the largest schools have no need of that infamous administrator, the assistant principal, who serves as the de facto disciplinarian in public schools. Little or no time and energy are spent in ritualized negotiations over the rules. Everyone knows

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what they are, and if a student consistently refuses to abide by them (which does occur now and then), he or she is simply asked to leave.

Christian teachers and Christian parents

The teachers too must accept strict rules. Of paramount concern to the pastors, who take ultimate responsibility for these schools, are the religious beliefs of their teachers. Nearly all the teachers in the schools I visited had been certified by state authorities; indeed, many of them were former public school teachers who for one reason or another had left the public sector. But as the pastors readily admit, academic qualifications are really of secondary importance. The first question they ask prospective teachers is the nature of their religious belief. All the pastors I talked with require their teachers to be born-again Christians, sign the congregation's doctrinal statement, and abstain from the same list of worldly practices that the students do.

In addition, Christian-school teachers must be willing to settle for extremely modest pay. The typical salary in the schools I visited is around $6000 for the academic year; a few schools pay even less. On occasion an unmarried woman who must support herself is paid slightly more. More frequently, male teachers who must support families are paid more than their female colleagues—an arrangement everyone I spoke to readily supported. But even these male teachers barely reach $7500 per year. In general, Christian-school salaries are a good deal less than those in elite private schools in the South, and easily half of public school salaries. Not only that, but they include no benefits such as medical or life insurance or retirement plans.

Teachers are crucial to any school, but especially to Christian schools. Without their sacrifices the Christian schools could not remain financially viable. This contributes to the clear sense of purpose displayed by the teachers I talked to. Moreover, they see themselves, and are viewed by the congregation, as pursuing a religious mission. Their sacrifices earn them a special place in these communities of faith. Certainly these are the factors that explain the dedication and openness of the Christian-school teacher. But if we are to believe the critics of these schools, this is a dedication grown out of the race prejudice believed to be the real force behind these schools. And perhaps racist sentiment could be perceived as sufficient to elicit the financial and other sacrifices made

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by parents who send their children to these schools. But it strains credulity to suggest that so many people, over so long a period, would be willing to accept such cuts in salary and such restrictions on their behavior just for the privilege of teaching someone else's white children.

By any standard, the involvement of parents in Christian schools would have to be described as intense, in most cases flowing directly from their commitment to the congregation. In addition to working as volunteers, families make considerable financial sacrifices on behalf of the schools. Beyond their weekly tithe to the congregation, parents with children in the schools pay tuition ranging from about $500 to $800 per year for each child. Though relatively modest—about half the tuition at traditional college-preparatory schools in North Carolina—this is frequently a strain on these predominantly working and lower-middle class families. Nevertheless, many sacrifice further by making pledges to capital fund drives launched at one time or another by all the schools, in most cases taking out personal bank loans to do so.

To bear these burdens, many mothers must work—a necessity that conflicts with their firm conviction that women belong in the home. A common compromise is to work in the schools as teacher aides, secretaries, cafeteria workers, and very often bus drivers. In schools I visited, virtually all the helpers are parents of children attending the schools. Thus it is not surprising that parents feel these schools belong to them; after all, their sacrifices help keep them going. And the parents I met seemed to enjoy feeling needed. One couple explained that they had had a choice between sending their son to a small, struggling Christian school or a large, well-established one. They chose the former, because they felt a commitment to the school was a commitment to their son's future. As they put it: "We are really in on the ground floor of something good."

When asked specifically why they reject the public schools, parents make it clear they need the Christian schools as much as the schools need them. Most frequently cited is the Supreme Court's 1963 school-prayer ban. A few parents mention a recent controversy over the singing of Christmas carols in public school assemblies. Many complain of the virtual disappearance of the pledge of allegiance from the public schools. A few are troubled by sex education. Such changes are seen by fundamentalist parents as direct assaults on God and country, the pillars of their universe.

On another level, parents are displeased with what they've seen

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or experienced as the declining academic standards of the public schools. They recite the familiar litany of open classrooms, curriculum fads, wide-spread social promotion, declining test scores, and illiterate high school graduates. Neither products of higher education themselves nor especially concerned that their children be, the salesmen, millworkers, and auto mechanics who send their children to Christian schools are particularly incensed that the public system does such a poor job of teaching the basics, and they point with pride to the impressive record of the Christian schools in teaching reading and math skills. In every school I visited, four-year-olds were prepared so that by the first grade most were reading above grade level.

Furthermore, as is suggested by the dress codes mentioned, these parents are rejecting the youth culture they feel now dominates the public school scene. One young mother in Charlotte explained why, after two and a half years in the public schools, she had decided to change to a Christian school. She had been quite pleased with the desegregated public school her son had gone to for first and second grade, but the following year the family moved, and he had to attend a different school—which she felt was academically inferior and rife with petty thievery and vandalism. But the last straw, she told me, was when she discovered that each day the children were allowed to play records for an hour, and her 9-year-old son had become infatuated with a rock group specializing in ghoulish costumes, demonic lyrics, and vomiting blood on its fans. Over the Christmas holidays she and her husband placed the child in a Christian school.

Like working and lower-middle class parents elsewhere, these people tend to be rather protective of their children—inclinations which are of course reinforced by their religious beliefs. As one father of five children, all of whom attend the same Christian school, said to me: "My son doesn't know ten people I don't know, and if he does, I want to meet them." For such parents, to send their children to the public schools would be to yield them up to institutions that will expose them to violence, drug and alcohol abuse, disrespect for authority, and sexual experimentation. These are parents who, it should be remembered, reject smoking and dancing as wordly sins. They see the public schools as institutions over which they can exert little control and which in turn seem unwilling to control their children.

The social problems of the public schools are also paramount to parents who are less devout. Indeed, a number of families who

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send their children to Christian schools are not actually members of the congregation, though they come from similar Protestant denominations. Many turn in desperation to the Christian schools as strongholds of values and standards of behavior long since gone by the boards in the public schools. One mother told me that in junior high school her son had been intent upon "drinking up all the liquor and smoking all the marijuana in town." When it came time for high school, she persuaded him to go to a Christian school —which succeeded, somewhat beyond her expectations, in turning him into a born-again Christian headed for the local Bible college. She was grateful to the school for turning him around, but unwilling to follow him into the fold—as of course the congregation hopes will happen when they accept such students.

Desegregation and Christian schools

It would be misleading to say that concerns over desegregation do not figure into the shift to Christian schools. Some of these parents were scared away or simply fed up with the turmoil surrounding desegregation in cities such as Charlotte, where for months police were required to quell disturbances between white and black youths. Other parents complain of petty thefts, vandalism, and physical intimidation of their children in integrated schools. It is always difficult to assess the extent of such problems and their relation to desegregation efforts. Less problematic, however, are the concerns expressed by numerous parents about safety on public school buses. With widespread busing to achieve desegregation of county school systems, North Carolina has had to rely on a high proportion of teenage bus drivers, who work cheaply but also have higher accident rates. By contrast Christian schools across the state boast that they rely on adult drivers, many of whom are mothers. Another problem parents have had is with paired-school schemes that arose from desegregation. When it came time for one third-grader to leave the desegregated neighborhood school he had attended for four years, his misgivings, along with the inconvenience of the crosstown bus ride and his parents' other doubts about the public schools, convinced this family and others like it to make the change. If their son had to go to a different school, they reasoned, it might as well be one over which they would have some influence.

Of course, as the pastors will readily admit, some parents send their kids to Christian schools because they just don't like blacks.

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But for most, desegregation is only the proximite cause of their abandonment of the public schools. Perhaps desegregation symbolizes the social turmoil they see pervading the public schools and the alien values they see dominating the culture; but for these "ordinary working people," as they describe themselves, not accustomed to voicing discontent to public officials, it is more like the last in a long series of affronts they have endured for years. And for these independent Baptists who refuse to take orders from other Baptists, let alone federal judges and bureaucrats, it is only natural that their accumulated grievances would find expression in the one institution they feel is theirs, the church.

Those who reject this interpretation of the Christian schools movement and reduce them to segregation academies must explain, among other things, why none of the schools I visited displayed the least evidence that racist doctrines are taught. In fact, they all espouse open admissions policies and in several schools black children are enrolled. Those who see nothing but racism lurking behind Christian schools would do well to ponder the development of one school described in a recent *Washington Post* article. The Riverdale Baptist High School in Prince George's County, Maryland was founded in 1971. In 1972 court-ordered busing was implemented in the county, and that year the population of the school jumped from 50 to 500. By 1977, when desegregation was in full swing, the school's popularity had grown to the point where it moved into impressive new quarters with an enrollment of 1300 students—*20 percent of whom were black.*

Those who routinely dismiss Christian schools as segregation academies must also explain why these schools are so radically different from public schools in terms of curriculum and religious orientation. Or, for that matter, why they are so fundamentally different from elite prep schools—which Christian parents dismiss as glorified public schools. Finally, skeptics need to be reminded that these are not the so-called "private" schools that miraculously appeared in the wake of public school closings in states such as Virginia, Louisiana, and Mississippi in response to the first Southern desegregation orders. The latter were supported by tuition grants, textbooks, and transportation supplied by the states, and were in fact the same segregated public schools that had always existed, hiding behind a "private school" label. Christian schools, by contrast, exist solely through the voluntary efforts of the congregations that support them, who as staunch supporters of the separation between church and state, take not a dime of public funds.

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Perhaps the social forces behind the Christian schools can be seen more clearly by examining the events in Kanawha County, West Virginia a few years back. In the fall of 1974 a sometimes violent controversy erupted over the county school board's adoption of innovative "language-arts" textbooks featuring unexpurgated excerpts from modern literature—complete with the usual profanities and challenges to traditional values. The protest was spearheaded by a school board member, Mrs. Alice Moore, the wife of a local fundamentalist Baptist minister, who had been elected as an opponent of a proposed sex-education program. From the hills surrounding Charleston there emerged three fundamentalist preachers to share the spotlight with Mrs. Moore—one of whom "vowed before God and man to kick out those filthy books that's in our schools." Just as in North Carolina today, the public schools were denounced as "anti-Christian" and "havens of creeping humanism." And in the wake of bombings, a miners' strike, and school boycotts, several Christian schools were set up. But through all this, the issue of race was nowhere in evidence. Indeed, Charleston's small black community had several years before been peacefully and uneventfully integrated.

Kanawha County is only the most dramatic episode in a virtual fundamentalist counter-revolution evident in schools across the nation. In Nassau County, New York a school board was recently persuaded to remove from library shelves eleven books denounced as "anti-American" and "anti-Christian." The *New York Times* reports that in Indiana, Iowa, California, and New York, fundamentalists have begun to challenge the teaching of Darwinian evolution. And in the early 1970's, born-again Christians had a lot to do with blocking implementation of "Man, A Course of Study"—the multimillion-dollar social studies curriculum developed by the National Science Foundation. All these are part of a more general resurgence of conservative and fundamentalist churches throughout the country. As Dean Kelley points out in his provocative book, *Why Conservative Churches Are Growing*, Seventh-Day Adventists, the Church of the Nazarene, Jehovah's Witnesses, and other fundamentalist groups have been growing at rates of up to 9 percent a year, at a time when mainstream denominations such as Methodists, Presbyterians, and Congregationalists have experienced unprecedented declines. Nor is the phenomenon limited to whites; some of the groups mentioned here have a strong following among blacks as well. On all these fronts, at least since the late 1960's, social and religious conservatism has been on the march. To reduce this con-

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servatism—and the Christian schools that have emerged from it—to racism is simply to ignore two decades of social and cultural upheaval.

The IRS proposals

In contrast to the view we have been developing, the Internal Revenue Service has offered its own interpretation of the Christian schools movement. After years of prompting by civil rights activists and public-interest law groups such as the Lawyers Committee for Civil Rights Under Law, the IRS in August 1978 issued proposed guidelines to determine "whether certain private schools have racially discriminatory policies as to students and therefore are not qualified for tax exemption under the Internal Revenue Code." The guidelines stated:

> A prima facie case of racial discrimination by a school arises from evidence that the school (1) was formed or substantially expanded at or about the time of desegregation of the public schools, and (2) has an insignificant number of minority students. In such a case, the school has the burden of clearly and convincingly rebutting this prima facie case of racial discrimination by showing that it has undertaken affirmative steps to secure minority students. Mere denial of a discriminatory purpose is insufficient.

The IRS went on to define "an insignificant number of minority students" as "less than twenty per cent of the percentage of the minority school age population in the community served by the school." Schools against which such a prima facie case had been established—the so-called "reviewable schools"—would lose not only their exemption from Federal taxes (including social security and unemployment contributions), but of more crucial importance, the right of individual donors to deduct charitable contributions to the schools from their federal income taxes. And in its specific refusal to exempt church-sponsored schools, the IRS directly challenged the sincerity of the religious sentiments I have identified as central to the Christian-schools movement. While any government agency is entitled to determine the sincerity of religious beliefs to which it accords special benefits, in this instance the IRS proposed to do so *not*—as wisdom and prudence would seem to require—after detailed inquiry and formal proceedings, but through summary administrative action triggered by an arbitrarily established quota. Thus the IRS reduced a multifaceted social phenomenon to a simple case of race prejudice. Moreover, as it makes plain in

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these proposals, the agency would place the full burden of proof directly on the schools. Assuming in advance the guilt of reviewable schools, it would act first and ask questions later. Thus the small and struggling schools, like those I visited in North Carolina, would be forced not only to undergo the expense of litigation, but to do so while deprived of the special tax status on which their existence substantially depends. In brief, these proposals posed a mortal threat to Christian schools.

In response to the furor created by their proposals, the IRS in February 1979 issued "revised proposed guidelines." These softened the more abrasive aspects of the original, but the fundamental thrust remained—the agency still assumed the guilt of schools not meeting its affirmative action quotas. The revised guidelines offered six examples of the kind of "affirmative steps" reviewable schools would need to take to regain their special tax status:

—active and vigorous minority recruitment programs;
—tuition waivers, scholarships, or other financial assistance to minority students;
—recruitment and employment of minority teachers and other professional staff;
—minority members on the board or other governing body of the school;
—special minority-oriented curricula;
—participation with integrated schools in sports, music, and other events and activities.

The most striking thing about these proposals is their inapplicability to Christian schools such as those I visited—all of which would lose their tax privileges if the IRS had its way. Each of these proposals would impose unreasonable burdens on these schools. Perhaps most egregious is financial assistance to minority students. As should be evident by now, the families who send their children to Christian schools are of modest means. The schools themselves live a hand-to-mouth existence, relying on tuition payments to cover operating expenses. Very little, if any, financial assistance is available to presently enrolled students. And whatever is available is certainly not enough to meet the IRS demands. By contrast the nation's traditional college preparatory schools—the "independent schools" as they like to be called—have with relatively substantial amounts of financial aid been able to attract enough black students to account for just over *4 percent* of their total enrollment. Viewed in this light, the IRS quotas on Christian schools seem neither reasonable nor equitable.

The proposal that Christian schools recruit minority teachers is

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also misguided. Relevant again is the experience of the nation's independent schools, which report great difficulty in attracting minority teachers away from relatively high-salaried public sector jobs. Certainly, Christian schools would be at an even greater disadvantage. And aside from financial considerations it seems doubtful that many educated minority teachers would be willing to abide by the strictures Christian schools place on staff.

Finally, the notion that Christian schools must place minorities on their boards seems wrongheaded. The boards of these schools consist of members of the congregations—usually the pastor and his deacons. To require that minorities be included means that individuals who have not participated in and contributed to the activities of the congregation must now be granted the status and prerogatives of its most respected members. It also means the IRS does not respect the right of blacks and whites in the South to go to separate churches. The fact that they do, and have for many generations, is scarcely the simple result of white racist machinations the IRS seems to imply.

Black churches and public schools

Separate black and white churches date from the post-Civil War era, prior to which slaves were seldom allowed to establish their own religious institutions, and were compelled instead to worship under the watchful eyes of their masters. As religious historian Sydney Ahlstrom demonstrates, the typical ante-bellum arrangement was integrated but paternalistic churches where blacks, frequently outnumbering whites, were confined nevertheless to separate areas of the church. There they were required to sing the songs and pray the prayers of their masters. To be sure, slaves worshipped in their own way whenever they could—the so-called "invisible institution"—but only the free blacks in the cities were allowed to establish their own churches, such as Richard Allen's African Episcopal Methodist Church, founded in Philadelphia in 1816.

Upon emancipation, the freedmen eagerly and immediately set up their own churches, which served in the difficult years that followed as important refuges from a hostile society. But by the 1960's the black church had, in the view of some, begun to outlive its usefulness. In 1963 E. Franklin Frazier could characterize the black church as "the most important institutional barrier to integration and the assimilation of Negroes." Today, of course, such

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pronouncements appear curious and dated, as black leaders reassert the strengths and uniqueness of the black religious experience. Rev. Joseph Roberts, successor to Rev. Martin Luther King, Sr. at Atlanta's Ebenezer Baptist Church, describes his own changes:

> I graduated from seminary in 1960 when integration was still big. I was the pastor of two integrated churches—trying to help the people live together as Christians—and almost denigrating the black experience in so doing, compromising by allowing the church service to be what I had learned in seminary: a modern version of the English Puritan worship of the 17th and 18th century. And then sort of disavowing who I was as a black person.

As the saying goes, the most segregated hour of the week is 11 o'clock Sunday morning. It would be wrong to ignore the influence of racism in the development of racially separate churches—especially in the South. But it would be foolish to ignore the fact that the continuing separateness of black and white churches reflects the needs and desires of blacks as well as whites.

Such factors may contribute to the difficulty Christian schools have in drawing sufficient numbers of black students to satisfy the IRS. Critics seldom consider the possibility that many black parents may not be interested in what these schools have to offer. They typically assume that black people are being denied something they desperately need and want—rather as if these were elite prep schools, the key to success. In fact, although Christian schools are successful at teaching basic skills in the lower grades, beyond this their accomplishments are minimal. The working and lower-middle class parents who rely on these schools have rather modest ambitions for their children—either Bible college, which may or may not be accredited, or no college at all.

By contrast, the educational aspirations of blacks are intense. As sociologist Sara Lawrence Lightfoot puts it, among blacks "education is not only valued, but formalized schooling is often seen as the panacea." This eagerness for education has translated in recent years into unprecedented increases in the educational attainments of young blacks. Black college enrollment from 1965 to 1976 grew by almost 400 percent, while white enrollment during the same period increased only 62 percent. Today the percentage of working and lower-middle class blacks attending college is actually higher than their white or Hispanic counterparts. Thus it seems doubtful that black parents would flock to the meager educational offerings of the Christian schools.

This is borne out by the fact that Christian schools which have

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responded to the IRS pressure by actively recruiting black students have in many cases been unable to do so. For example, the headmaster of a Baptist school in Memphis with an enrollment of 3800 testified before Congress that six years of active recruitment had succeeded in enrolling only 46 black students in the summer program and two in the regular school program. In his opinion, black leaders contributed to his lack of success by discouraging parents from sending their children to Christian schools. Indeed, the head of the Memphis chapter of the NAACP testified at the IRS hearings, "No right thinking black Baptist minister would counsel his parishioners to participate in such a racial undertaking when, after two decades of constant struggle, a desegrated public school system is on the horizon."

Similar counter-pressures from within the black community are reported in a study of a rural Georgia county by the Center for Research and Social Change at Emory University. In this instance the county's one private school, under pressure from the IRS's proposed guidelines, sought to enroll minority students but met with a campaign of radio and newspaper ads urging black parents to keep their children in the public schools: "Don't be used up in the private schools" and "Don't be a backlash on your roots." The fact of the matter is, despite the recruitment efforts of some Christian schools, blacks see them as segregation academies, pure and simple. Black people I spoke with in North Carolina certainly felt this way. Black mistrust of these schools is sufficiently great that no amount of regulation by the IRS will persuade black parents to send their children there. Indeed, one gets the impression that nothing short of closing the Christian schools down will satisfy many black leaders.

Of course, the black parents not only distrust Christian schools, they are understandably reluctant to abandon the public schools after investing years of effort in them. And for blacks who have gained positions of leadership and responsibility in teaching and administration, public education is obviously where the action is. Moreover it is clear that black people tend to feel more comfortable with public rather than private programs. While private institutions are tainted with particularistic impulses frequently harmful to blacks, public institutions embody universalistic principles of free access and equal treatment. And while private programs frequently carry connotations of charity by a few individuals, public ones appeal to the black community because they represent a commitment by the entire society. As the one immigrant group that

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did not arrive here willingly, blacks tend to feel that American society still owes them a debt; that reparations, as they were called in the 1960's, are still due. The commitment of significant public resources to free and equal education is just such a reparation.

Invidious distinctions

As we have already noted, the guidelines originally proposed by the IRS refused to distinguish between religious and nonreligious schools. But even those sympathetic to the agency's approach quickly saw problems with this approach. As a *New Republic* article outspokenly entitled "Subsidizing Segregation" pointed out:

> It's possible to imagine a situation where genuine religious schools could be trapped unfairly by the proposed IRS guidelines. . . . A Jewish or Amish school, for example, might have a hard time meeting the alternative tests for continued exemption, because of the rarity of Jewish or Amish blacks.

In response to such concerns the IRS proposed two exemptions from its racial quotas. The first applied to any school that was "part of a system of commonly supervised schools"—provided the entire system satisfied the guidelines. The other applied to schools with "special programs or special curricula which by their nature are of interest only to identifiable groups which are not composed of a significant number of minority students." What became evident during the Congressional hearings was that the first exemption was directed primarily at Catholic schools operating as part of a diocesan system and the second at Jewish day schools.

Unfortunately, this understandable effort to reconcile the logic of integration with the reality of exclusive religious groups creates more problems than it solves. The obvious question arises: Are Jewish day schools or Catholic parochial schools more "genuinely religious" than the Christian schools I have been describing? This is, of course, precisely the kind of invidious distinction between religious groups that the First Amendment is meant to obviate. And perhaps not surprisingly, ill feelings toward Catholics and Jews were at times evident among many who testified against the IRS proposals. For some the solution to this problem is to grant religious groups absolute freedom from all government regulation. I cannot adequately deal with this difficult issue here, but attention certainly can be drawn to the dangerous path taken by the IRS.

By now it must be evident that the forces involved in the Christian school movement are sufficiently complex that the issue of ra-

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cial motives requires detailed investigation into the specifics of each case. Of course, this would normally be triggered by a complaint by, for example, parents who felt they had been discriminated against by a particular school. The ensuing litigation would then allow for judicial scrutiny of the policies of the school and of the motives of those involved with the school. It is precisely this careful, time-consuming examination of intent that the IRS seeks to avoid with its single-minded reliance on numerical quotas.

And in this regard it is important to note that the proposed guidelines represent a drastic and questionable departure from previous IRS policy. Since 1970 that policy has been to require private schools seeking tax exempt status to make various public declarations of nondiscriminatory admission policies. Curiously, the basis of that policy is a federal district court decision which the IRS now cites as the basis of its affirmative-action guidelines. In *Green v. Connolly*, a class of black parents successfully challenged the tax exemptions of several Mississippi private schools. But unlike the Christian schools we have been discussing, these were self-declared segregation academies. As a result the court enjoined the IRS from granting exempt status to any Mississippi schools that failed to declare publicly a "racially nondiscriminatory policy as to students." And as to what the court meant here, there can be no doubt. To monitor compliance with its decision the court required affected schools to submit relevant data to the IRS, including enrollment figures. But here the court explicitly avoided any hint of racial quotas and emphasized:

> Our requirements do not establish substantive criteria but are information requirements, to assure that the Service will have salient information at hand before it makes a certification or gives an assurance of exemption or deductibility.

Similar questions arise with another case to which the IRS frequently refers as a basis for its affirmative-action proposals. In *Norwood v. Harrison* another federal district court ruled that private schools against which a prima facie case of discrimination had been established were ineligible to use textbooks purchased by the State of Mississippi. The court went on to specify that the absence of black students and teachers in a school was at least partial basis for such a prima facie case. Aside from the fact that the Christian schools discussed here receive no state subsidy such as textbooks, it is crucial to note that here again racial quotas were explicitly rejected:

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> At this point, it is important to emphasize that the ultimate issue in administering Mississippi's textbook program to private schools is not whether black students are actually enrolled at the school, but whether their absence is because the school has restrictively denied their access; simply, does the school have a racially discriminatory admissions policy?

The nature of a tax exemption

Perhaps the most fundamental—and least examined—aspect of the IRS proposals is the assumption that tax exemption is a government subsidy that, like a federal grant to a university, triggers affirmative action requirements. IRS Commissioner Jerome Kurz cites Title VI of the Civil Rights Act of 1964 as requiring the proposed guidelines. It reads in part:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Without stopping to question here the disputable notion that this section requires the enforcement of racial quotas, we move on to ask whether tax exemption constitutes "federal financial assistance." The IRS clearly thinks so and cites *Norwood v. Harrison* to justify its proposals. But this case, which involves direct state aid in the form of textbooks to private schools in Mississippi, clearly has no bearing on Christian schools that refuse all state aid on religious grounds.

Nevertheless, the primary basis for the IRS's argument that tax exemption constitutes a government subsidy is the *Green v. Connally* decision in which the court, in addition to its other findings, concluded that tax exemption was unquestionably a form of governmental support to which schools practicing racial discrimination were not entitled. As the IRS emphasizes, this decision was later affirmed by the Supreme Court. At the same time the IRS neglects to mention that the Supreme Court has also explained that the *Green* decision, for technical reasons, lacks the weight of precedent and that as far as the Court is concerned it has not reviewed the question whether discriminatory private schools are entitled to tax-exempt status.

Beyond these legal arguments the proponents of the IRS's position stand on less technical grounds. Harvard Law Professor Stanley Surrey, for example, argues persuasively that tax exemptions

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represent a "cost" to the federal government in the form of foregone revenues. And since 1975 Congress has required the federal budget to include an accounting of such "tax expenditures." Nevertheless, this apparently common-sense accounting device raises some difficult issues. As Professor Richard Wagner has pointed out, the theory of tax expenditures assumes that everything not taxed by the government represents a government expenditure; or at least it does not offer a reasonable rule for what is and what is not to be considered an expenditure. For example, should husbands be taxed for the imputed value of their wives' services as homemakers? The tax expenditures notion seems to suggest this is feasible, and that government's failure to tax this represents an expenditure and, in effect, a subsidy to husbands.

Others argue that tax exemption represents a reimbursement to institutions providing services that the state would otherwise have to provide. This notion of a *quid pro quo* makes a good deal of sense in the case of charitable institutions such as hospitals, orphanages, and even private schools. But in the case of churches and religious schools this argument makes little sense. After all, these offer services that the state is constitutionally prohibited from providing or subsidizing! In addition, this argument would not apply to a range of philanthropic activities such as museums that the state might very well not feel the need to finance. In sum, the *quid pro quo* argument is only a partial justification for tax exemption.

Beyond these considerations, we must clarify some important differences between government subsidies and tax exemptions. Government grants, by their very nature, are rooted in the statutory process. Legislative bodies debate the merits and appropriate funding level of a particular grant; administrative agencies make the appropriations and are empowered to ensure that they are spent in accordance with legislative intent; and the grant is subject to periodic review which may expand, contract, or discontinue it. Upholding the constitutionality of property tax exemptions to churches, the Supreme Court states in its *Waltz v. Tax Commissioner* decision:

> Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative standards, but that is not this case. The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state. No one has ever suggested that tax exemption has converted libraries,

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art galleries, or hospitals into arms of the state or put employees on the public payroll.

With a subsidy, the initiative is always with the government. The system of tax exemption, on the other hand, puts the initiative elsewhere. By means of a grant the government can create or sustain an organization or program; it can do no such thing by means of a tax exemption, for the survival of the tax-exempt organization depends wholly upon the generosity and commitment of individual citizens. The amount of help such an entity receives is similarly dependent, not on state action, but on the decisions of citizens. Finally, no one is compelled to contribute to tax-exempt organizations, but a subsidy in effect forces contributions from all citizens.

Most important, the tax exemption system has deep roots in uniquely American notions of pluralism and individual initiative. This emerges most clearly when we consider the tax exemption of religious institutions. From the beginning, the American colonies exempted churches from local property and other taxes—in accord with well-established English custom. But in America, exemption was to take on a new and different meaning. To be sure, only a few colonies like Pennsylvania had anything like today's religious freedom. There were established churches, such as in Massachusetts Bay, from which dissenters, such as Roger Williams, had to flee. But even in these, the incredible diversity of the colonial peoples led to considerable accomodation and freedom. The emerging American solution to the religious turmoil of the sixteenth and seventeenth centuries was, in a word, tolerance.

The nineteenth century reinforced these tendencies, although the emphasis shifted somewhat from religious tolerance to the classical liberal concerns of limiting government and fostering private initiative. As President Eliot of Harvard made the case in 1864:

> It has been often asserted, that to exempt an institution from taxation is the same thing as to grant it money directly from the public treasury. This statement is sophistical and fallacious. . . . The exemption method is emphatically an encouragement to public benefactions. On the contrary, the grant method extinguishes public spirit. No private person thinks of contributing to the support of an institution which has once got firmly saddled on the public treasury. The exemption method fosters the public virtues of self-respect and reliance; the grant method leads straight to an abject dependence upon the superior power—Government.

By the time Congress got around to enacting a federal income tax at the beginning of this century, the exemption habit was so

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deeply ingrained it was simply taken for granted that religious and charitable institutions would be exempt. There was virtually no discussion of the matter, and the burden of proof is definitely upon those who argue that tax exemption is a subsidy, since there is no evidence Congress ever intended it as such.

The genius of tax exemption is as a mechanism by which government encourages individual initiative and freedom of association without fostering entanglements and dependencies. Yet these IRS proposals would use the same mechanism to extend, not limit, the reach of government. The assumption that tax exemption is a government subsidy obliterates the distinction between public and private basic to our political traditions. It would be a dangerous precedent, established by the IRS to accomplish what?

To eliminate what is still, in spite of recent growth, a small number of schools—the IRS Commissioner himself admits he does not know how many would be affected. To attack a culturally marginal phenomenon that subsists not on large financial contributions but on the zeal of a few fundamentalists whose extreme disaffection with the direction of American society is not likely to be widely imitated. To extend government control over institutions that are private in the fullest sense, refusing on religious grounds to accept a penny of state funds.

Certainly not all private schools established in recent years are free from suspicion as to their origins. Yet the schools I visited form part of a class of schools that has been grossly misundertood. And beyond this, the IRS proposals raise the larger question: How far can government reach into realms long held inviolable? This is not to argue, as do the proponents of Christian schools, that as religious organizations they should be exempt from government scrutiny. After all, schools perform a function in which the public has a vital interest. But as the Supreme Court put it fifty years ago in *Pierce v. Society of Sisters*, "the child is not the mere creature of the state." Nor, we might add, are institutions that exist solely through the free initiative and voluntary commitment of their members.

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The mandate millstone

EDWARD I. KOCH

OVER the past decade, a maze of complex statutory and administrative directives has come to threaten both the initiative and the financial health of local governments throughout the country. My concern is not with the broad policy objectives that such mandates are meant to serve, but rather with what I perceive as the lack of comprehension by those who write them as to the cumulative impact on a single city, and even the nation.

I want to emphasize that my criticism is directed at the shortcomings of a system that has evolved over the course of many years. This is not the fault of particular individuals nor of today's leadership; it is rather an inheritance from the work of several administrations and Congresses, including some in which I served.

The City of New York, as an example, is driven by 47 federal and state mandates. The total cost to the city of meeting these requirements over the next four years will be $711 million in capital expenditures, $6.25 billion in expense-budget dollars, and $1.66 billion in lost revenue.

On the federal level, the current crop of mandated programs is really the second stage in the evolutionary process of activist lawmaking exhibited by the Congress. First, in the 1960's came the

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Great Society programs. The nation's cities could choose from a bountiful catalog of federal grants which offered to foot 80, 90, or even 100 percent of the cost of enormously ambitious programs. In a time of unprecedented prosperity, with only higher expectations ahead, local governments eagerly went after federal funds even, at times, at the expense of comprehensive planning.

Left unnoticed in the cities' rush to reallocate their budgets so as to draw down maximum categorical aid were the basic service-delivery programs taken for granted by the Great Society architects. New roads, bridges, and subway routes were an exciting commitment to the future, but they were launched at the expense of routine maintenance to the unglamorous, but essential, infrastructure of the existing systems. Further, the enticement of federal aid drew cities into new social service commitments that were soon to monopolize their budgets.

The 1960's left a bitter legacy for cities in two respects. As prosperity fell hostage to inflation, and then stagflation, the bright promises of programs so boldly launched with federal aid collapsed under exponential cost overruns. Projects under construction, such as New York's Second Avenue subway, had to be abandoned, and the now-concealed but still-remembered excavation serves to remind the public of how easily government can fall victim to monumental folly.

Perhaps more damaging was the shift in the 1970's in the legislative approach, particularly in Congress, to the grand commitments of the 1960's. Sweeping solutions to social ills were still in vogue, but this time the public purse had a bottom to it, and its guardians became adept at fending off the claims of local governments. The result has been an ever widening gulf separating the programmatic demands of an activist Congress from its concurrent fiscal conservatism. By the close of the 1970's, the cities found themselves under the guns of dozens of federal laws imposing increasingly draconian mandates. From the perspective of local government the mandate mandarins who write these laws appear to be guided by certain disturbing maxims, such as:

1. *Mandates solve problems, particularly those in which you are not involved.* The federal government, for example, has shown no reluctance in ordering sweeping changes, the impact of which it will never have to face since it does not hold the final service-delivery responsibilities in such areas as education, transportation, and sewage disposal.

2. *Mandates need not be tempered by the lessons of local ex-*

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perience. Frequently a statutory directive will impose a single nationwide solution to a perceived problem, such as sewage treatment, that has been developed in the isolation of a consultant's office and rarely, if ever, exposed to real world conditions in the affected regions.

3. *Mandates will spontaneously generate the technology required to achieve them.* Congress has shown a disturbing penchant for prohibitions on existing approaches to problems such as ocean dumping, for which no practical replacement has been developed.

4. *The price tag of the lofty aspiration to be served by a mandate should never deter its imposition upon others.* Statutory commands are rarely accompanied by adequate financial assistance. Most extreme in this instance is the accessibility mandate for transit systems and the requirements relating to the education of the handicapped.

I do not for a moment claim immunity from the mandate fever of the 1970's. As a member of Congress I voted for many of the laws which I will discuss, and did so with every confidence that we were enacting sensible permanent solutions to critical problems. It took a plunge into the Mayor's job to drive home how misguided my congressional outlook had been. The bills I voted for in Washington came to the House floor in a form that compelled approval. After all, who can vote against clean air and water, or better access and education for the handicapped? But as I look back it is hard to believe I could have been taken in by the simplicity of what the Congress was doing and by the flimsy empirical support—often no more than a carefully orchestrated hearing record or a single consultant's report—offered to persuade the members that the proposed solution could work throughout the country. The proposals I offer address this problem by increasing the level of scrutiny applied to both the cost and feasibility of mandates directed at local governments.

Let me now turn to the case histories of some of the more onerous mandates faced by New York City. I use my city as an example because I know its problems best. The problems we face, of course, occur throughout the United States. The numbers may be larger in New York but these mandates have an equally significant impact on the budget and local autonomy of every city.

Transportation and education for the handicapped

An example of a mandate that may totally skew capital spending nationwide in the 1980's at all levels of government is the handi-

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capped-access program required by regulations promulgated in response to Section 504 of the Rehabilitation Act of 1973.

No one would argue that we need not commit funds to make transit systems and buildings accessible to the handicapped. But one also has to deal with the limitations—both financial and physical—that exist in the real world beyond the printed page of the *Federal Register*.

The Departments of Transportation and Health and Human Services (the erstwhile Department of Health, Education, and Welfare), have issued regulations that set as a mandate total accessibility for the handicapped to transit *systems*, instead of dealing with the *function* of transportation: mobility. In rejecting numerous appeals for modest exemptions and waivers, these regulations impose a restrictive and inflexible interpretation of the basic mandate of Section 504. Ironically, in focusing on accessibility the regulations fail to benefit a significant portion of the severely disabled. Subways and buses may ultimately be made fully accessible, but a disabled person may not be able to get to the system to enjoy its accessibility.

In this instance, alternatives are available. New York City has a far more extensive and flexible bus system than subway system. Given the numbers of handicapped people affected—some 22,800 in wheelchairs and 110,000 semi-ambulatory for a system that carries about 5.3 million people on a weekday—a more reasonable approach can be formulated to meet the transportation needs of the disabled. The City of New York has proposed making its buses accessible and providing a paratransit system for the most severely disabled. Paratransit will provide door-to-door service and can make the difference between a handicapped person being a prisoner in his or her home or a mobile member of the community. Similar paratransit services are in planning or underway in other cities.

The DOT regulations presently proposed do not accept the alternative of a bus and paratransit mix. Beyond bus accessibility, the regulations appear to demand accessibility in 53 percent of our subway stations within 30 years, at a cost in today's dollars of some $1.3 billion. Added to this will be at least $50 million in recurring annual operating expenses. And the regulations make no affirmative provision for meeting the handicapped community's myriad difficulties in getting to buses and subways.

It would be cheaper for us to provide every severely disabled person with taxi service than make 255 of our subway stations accessible. Indeed, the Congressional Budget Office, in its report of

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November 1979 on "Urban Transportation for Handicapped Persons: Alternative Federal Options," estimated that the cost of implementing the Section 504 regulations, when spread over the limited number of wheelchair users and severely disabled passengers, will be $38 per trip. In contrast, transit trips by the general public cost, on the average, about 85 cents.

Should we somehow achieve the prescribed level of systemwide rapid transit accessibility, I believe that even the most courageous will test it only once to satisfy themselves that they are able to ride the subways and that few will ride them on a regular basis.

The history of this mandate points up a basic fallacy in the process leading to its promulgation: unrealistic projections by federal agencies of the cost of realizing mandated goals. When the Department of Transportation issued its preliminary nationwide regulations for public review and comment in early 1978, it used a figure of $1.8 billion for the contemporary cost of making all transportation systems accessible. This was clearly an unrealistic estimate and implied an unwillingness by the Department to face up to the magnitude of the course they were proposing to require. The Congress acknowledged this credibility gap and in 1978 ordered the Department to submit by early 1980 a report on the costs of accessibility, based on a survey of all rail-transit operators.

Finally, the Section 504 regulations are crippled by the lack of available technology to achieve the mandated standard of accessibility. Bus lifts have yet to be developed that operate without frequent breakdowns; no American bus manufacturer would even bid to build the Transbus; and people are just starting to think about devices that can span the distance between a rapid-transit vehicle and the passenger-boarding platform.

The issue of transit accessibility is one that the Department of Transportation must deal with quickly. If an affirmative policy decision is not made to bring the demands of Section 504 in line with the practical limits on compliance efforts, transit subsidies in the 1980's will be severely distorted—making systems accessible to several thousand people, while forsaking improvements needed on the total system. The cost in operating reliability will very likely reduce the quality of service available to both current users and those who should benefit from improved accessibility. We may, in fact, build a system under the Section 504 mandate which most handicapped people won't be able to use because of the barriers still remaining, and which, if they do manage to board, breaks down far more frequently.

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While the Congress may have been thoughtless or arbitrary in compelling universal access for the handicapped without sufficient consideration of the real world constraints on localities, it has been almost cynical in its implementation of the directive that all handicapped children be provided "a free and appropriate education." It is impossible to attack the virtues of this objective. Yet the structure of the program enacted to accomplish it not only dooms the compliance efforts of local school districts, but also jeopardizes the overall quality of education that can be offered to all children.

The federal law contains three fundamental defects. First, the formula by which accompanying federal assistance is measured looks to the national average cost of educating a non-handicapped child and thus completely overlooks the far broader scope of services that are needed to bring the promise of the mandate to the actual population it was designed to benefit. The formula contains a second fallacy in its use of a single nationwide average cost. It deprives school districts with high education costs and high concentrations of handicapped pupils of any recognition of the greater costs and special problems they face in designing compliance programs. In New York City we have had to budget $8,180 per handicapped pupil, nearly three times the cost of educating a nonhandicapped child. This compares to the national average figure of $1,400 per non-handicapped child employed by the federal government to determine the level of assistance for educational programs for the handicapped. Third, and most disturbing, has been the consistent failure by Congress even to appropriate the full measure of assistance authorized by an already restrictive formula. Here we have the Congress implicitly reneging on the delivery of an already meager federal share of the cost of meeting its own national mandates. The shortfall in appropriations has grown over the past two years to the point where less than half of the authorized amount has been distributed to affected school districts. The act authorized an appropriation in fiscal year 1980 of 20 percent of the understated federal calculation of national costs; the appropriation, however, was only 12 percent. In short, first they underestimate the costs and then they underfund the underestimate. New York City is receiving only $8.5 million in federal aid while spending an estimated $221 million in tax-levy dollars for special education in fiscal year 1980. Our commitment will grow to at least $278 million in fiscal year 1981 and we can only hope that the Congress will keep pace.

This mandate, combined with an inadequate level of federal

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funds for its fulfillment, has compelled the diversion of increasingly scarce local resources from the education of the rest of the school population. And as in Section 504, the absolute terms of the mandate discourage any efforts at the local level to develop alternative approaches to the statutory objective—such as the use of special facilities providing intensive attention to the needs of handicapped children—which might ease the enormous financial burden imposed by the program.

Ocean dumping—a mandate gone haywire

Perhaps the most graphic example of a mandate gone haywire is the prohibition, effective on December 31, 1981, of current ocean-dumping programs, including New York's, for the disposition of sewage sludge. In the face of an absolute command to shut down ocean dumping we must look for alternate technology. It would seem elementary that the planet earth, reduced to its most basic elements, offers us only land and water and what cannot be dumped in the ocean must be deposited on land. Incredibly, the Congress and the Environmental Protection Agency have imposed the ban out of concern for water quality, in the absence of reliable land-disposal technology.

Every way the City turns with its sludge it encounters another federal regulation. Banned from the ocean, the alternative we must use—dewatering and composting—will create an end product ladened with heavy metals, the disposal of which may come into conflict with anticipated landfill regulations, permanently rob the landfill of future agricultural use and endanger the area's watertable. The dewatering and composting of sludge will require a $250 million capital investment and $35 million in annual operating costs. The federal government will provide 75 percent of the capital costs; but New York City must shoulder at least 75 percent of the operating costs with the State assuming the remaining 25 percent. This will be only an intermediate step toward an as-yet-undeveloped permanent replacement for the existing ocean-dumping program. It is anticipated that a permanent replacement will be available in ten years, at which time we will be forced to abandon $150 million of the capital investment in the interim solution because of the potential health and environmental hazards it poses. This is what you might call a classic example of planned obsolescence—all for an imperceptible alteration in water quality for a brief period of time.

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While we are covering our land with sludge contaminated by toxic materials, full compliance with yet another EPA regulation, administered jointly with the U.S. Army Corps of Engineers, may result in the cessation of all commerce in the Port of New York. This commerce annually produces more than $32 billion in foreign cargo trade and generates $1.5 billion in personal and business income for New York City's economy. To accommodate the large container vessels that have become the standard vehicle for moving goods by water, the natural depths of New York Harbor must be continually dredged. We have secured a three year extension of the ban on ocean dumping of dredged material. The extension does not, however, relieve us from the obligation to perform the costly bioaccumulation tests required by EPA's ocean-dumping criteria, which are subject to evaluation by both EPA and the Corps of Engineers. The interpretation of these tests by the two agencies can be inconsistent, so that they may be judged to be within permissible parameters by the Corps of Engineers but not EPA.

The disposition of dredge spoil is plagued by yet another arbitrary standard: the requirement that localities assess seven alternatives for the disposal of the material. The review of seven "possibilities" is required even though only three practical options appear to be available: ocean disposal, contained upland disposal, and use of subaqueous burrow pits.

While the standard laid down by the ocean-dumping mandate is currently unrealistic, another federal standard compels the City of New York to operate its sewage-treatment plants at secondary-treatment capacity, even though area water quality does not require this level of treatment year round. It may be hard to argue against pure waters, but this standard will force the City of New York to spend $10 million in FY 1981 for superfluous secondary treatment. I might add that while the federal government contributes 75 percent of the cost of constructing sewage plants, it leaves to the locality the full cost of their operation. Furthermore, the federal government tells us how to operate and man the plants. New York State has used its interpretation of the federal regulations as an excuse to deny its 25-percent share of operating costs. We are now having to sue the State of New York over the denial of the City's application for reimbursement in the amount of $6 million withheld in FY 1977.

San Francisco, like New York City, plans to build new secondary-treatment facilities. It also contends that full secondary treatment is not necessary on a year-round basis. Consequently, San Francisco

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has asked EPA to allow it to operate the plant at the primary-treatment level during the winter months. Other localities such as Los Angeles and Boston have filed applications with EPA in an effort to obtain complete exemptions from the secondary-treatment requirements.

My concern is not simply with the needless expenditure of local dollars, but also with the federal dollars committed to these programs in amounts that, considered in the context of overall urban needs, are desperately required by other urban programs. We must respond to the fiscal and public-policy dilemma that is created by the *cumulative* impact of courses that individual mandates are blindly propelling us down. Mandates obscure priorities and encumber comprehensive planning.

Public assistance—strange thinking and skewed formulas

Another example of a federal statutory mandate that frustrates local efforts to administer vital programs is the ceiling placed on the use of restricted public-assistance payments. In New York State, the Aid to Families with Dependent Children program (AFDC) is structured to include a separate shelter allowance for welfare recipients. The total grant paid to each recipient is different depending on his or her rent expenses. The Congress mandates that these monies be included in the recipient's grant and not be paid directly to the landlord. The ostensible rationale for this measure is to preserve the tenant's basic freedom of choice in allocating his check to food, housing, and clothing in a manner consistent with his priorities. Exceptions to this policy are made only if a recipient is found to have mismanaged the federal funds. Historically, non-payment of rent for more than a month has satisfied the mismanagement test.

New York City is faced with an accelerating syndrome of insolvency and abandonment by landlords who provide many of the lower-income rental units to AFDC recipients, usually because monthly rent collections fall far behind costs. These building owners have repeatedly approached the City seeking relief in the form of "two-party" welfare rent checks which would be issued to tenants who receive public assistance but require co-signature by their landlord before cashing. The City has made a strong effort to implement a two-party check program in areas especially hard hit by urban blight.

Our efforts to improve the situation have been blocked by a

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federal law that limits to 20 percent of the caseload the number of welfare clients who can be placed on restricted two-party payments. If we exceed this limit we are subject to federal and state disallowances that could result in the witholding of the 75 percent federal and state share of restricted rents exceeding the 20 percent ceiling. A flat 20 percent limit is unrealistic given the magnitude of the problem in New York City. In August 1979 restricted grants reached a level of 18.8 percent of total grant recipients. This required the launching of a crash effort last October to remove clients from two-party rent restrictions before we could recoup the funds advanced to prevent their eviction for non-payment of rent. We are now at a level of 17 percent of the overall caseload.

Our problems in this area could be compounded further. The Department of Health and Human Services (HHS) has aired a regulation that would prohibit placing a welfare recipient on the restricted-payment procedure solely for not paying rent on time.

HHS argues that failure to pay the rent may not be sufficient evidence of mismanagement. When pressed to provide an acceptable definition of mismanagement, HHS suggests that the City would, in every individual case, have to show a diversion of rental funds to such things as vacations, drugs, or liquor. Using rent money for items such as food and clothing would not be deemed evidence of mismanagement, despite the fact that the landlord will come up short in rent collections, and even though each recipient receives a special amount for rent, as well as food and clothing allowances.

The HHS answer to the loss of housing caused by non-payment of rent would appear to require the City to publicize counseling services to clients who have difficulty managing their budgets. HHS has even suggested that the City's social-service staff make home visits to clients to provide the counseling. This latter suggestion from Washington bureaucrats is particularly naive when it is made to a City saddled with an AFDC population of 736,000. The administrative cost of such a system would be enormous and its effectiveness a matter of speculation.

Fortunately, wiser heads appear to be prevailing. HHS officials are now discussing with State and City officials a more realistic approach to the problems associated with the definition of mismanagement. I am hopeful that this will yield an administratively practical way of protecting the interest of families, while not contributing to further deterioration of our housing stock.[1]

[1] In May 1980 officials of HHS agreed to revised procedures for the definition of mismanagement that are acceptable to the City.

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The most severe impact of the restrictions imposed on the two-party check program is the loss of an important component of the City's housing-preservation efforts. Of far more immediate concern to our overall financial condition, however, is the statutory formula setting ceilings on the federal share of total AFDC and Medicaid programs. The underlying design of both programs directs that the City provide assistance to a potentially unlimited number of recipients, but allows little local control over the benefit levels or eligibility standards which determine their total cost. Having imposed these enormous expenditure commitments, the Congress then restricts its participation by a cost-sharing formula that has long been obsolete.

Enacted in the 1940's, the federal-share formula links the reimbursable percentage of program costs to the per capita income of each state. As much as 65 percent of AFDC and 70 percent of Medicaid benefits will be absorbed by the U.S. Treasury in states which rank lowest by this single measurement. New York, with one of the highest per capita incomes in the nation, is limited to the minimum 50 percent contribution for each program. The authors of the formula may have thought their index accurately measured the capacity of state and local government to generate the revenues needed to cover their share of the total costs of an open-ended program. But per capita income, in isolation, cannot reflect two other critical determinants: cost of living and the size of the overall tax burden that a state or city is asking its citizens to shoulder. Since New York ranks at or near the top in these criteria, the ability of its taxpayers to carry steadily-increasing public-assistance costs is, in fact, no greater than that of taxpayers from states enjoying the aid of the higher federal reimbursement rates.

Court and state mandates: not to be outdone!

In addition to the federal statutory and administrative mandates reviewed so far, the City must also cope with the staggering impact that decisions of the federal courts, interpreting and applying the sweeping mandates of federal law, can have on the fiscal stability of localities and on their ability to govern with some minimum degree of flexibility. In New York City, for example, a program was initiated in conjunction with a planned new hiring of entry-level officers aimed at increasing the total number of minorities on the police force. The Police Department spent $250,000 conducting an intensive recruiting campaign among minority groups, and arranged

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for test preparation classes at locations throughout the City that were readily accessible to candidates from minority communities. The City designed a civil service examination, with the aid of outside experts, that would produce the largest possible number of eligible candidates from all ethnic groups. Minority applicants represented 30 percent of those taking the test. When the Civil Service appointment list was prepared from the results of the test, 13,000 candidates—the number sought as the pool needed for hiring—had obtained a grade of 94 or better. When an ethnic survey disclosed that of the 13,000 placed on the list only approximately 15 percent were black or hispanic, a federal judge found not only statistical discrimination from the test results, but went further and held that the results were evidence that the City had practiced *intentional* discrimination. He then directed that a quota be used in hiring from the list, requiring 50 percent of new hires be black or hispanic candidates, until at least 30 percent of the total police force was black or hispanic. The net effect is that the courts are no longer examining the fairness of the test; they are examining the results. And if the test does not turn out the way the judge wants, he imposes the result that is consistent with his personal, political viewpoint.

I believe that the judge in the police case is simply wrong on the finding of intent, and the facts and the law.[2] But the real threat to the City from this decision is that under federal law, unless the City enters into a compliance agreement with the Office of Revenue Sharing in the Treasury Department imposing some kind of quota or affirmative action program—and, I might add, thereby violates our Civil Service obligations under the State Constitution—the City's unrestricted revenue-sharing funds, approximately $300 million per year, could be withheld by the federal government. That situation is simply intolerable and affects not only New York but every state and city in this country.

The problems posed by the self-styled altruism of the federal mandates reviewed thus far are compounded by equally and in some cases more arbitrary dictates of state government. The unique size and density of New York City usually precludes our legislature from using the shield of uniformity to cloak an inflexible directive.

[2] The United States Court of Appeals recently rejected the District Court's finding of intentional discrimination, and held that the test was job related. The Court of Appeals also ruled, however, that hiring from the list of successful candidates strictly by test-score-rank order violated Title VII, and that an affirmative hiring quota could be employed as a remedy. The City expects to appeal this ruling to the U.S. Supreme Court.

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That has not, however, prevented Albany from imposing its own onerous requirements on the City.

The state, with local concurrence, has assumed since 1976 responsibility for the administration of the judiciary at all levels. The generosity of this arrangement has been tempered in large degree by legislation a year later which restored the local obligation to finance all maintenance, improvement, and expansion programs required to support an adequate level of caseload capacity. Thus reduced to the status of a silent partner, we face escalating annual local-tax-levy commitments to the state-run court system that will reach $23 million by fiscal year 1982.

The state public-housing program offers a second example of the serious fiscal implications of an imposed local partnership. Prior to 1961 New York State made separate payments to each state housing project. Then, the legislature consolidated its subsidy payments, and froze the state share at $44 million. This has left the City's budget as the bank of last resort for the chronic deficits experienced in metropolitan-area projects. With rents kept down to assure an adequate housing supply for lower-income tenants, and maintenance costs increased by inflation and the facilities of age, the City must increase its subsidy to this program by an average of 17 percent each year. We will be spending $13 million by Fiscal Year 1983 to comply with the state-mandated obligations.

An even more extreme example is the state mandate that the City provide legal services for indigent parties in the courts. This exposes our budget to still another significant and potentially unlimited expenditure requirement that will amount to at least $9 million annually in the next three fiscal years. The state's contribution to this program is zero.

Perhaps the most unfair type of state regulation is that which holds out the promise of fiscal relief but measures eligibility by an impossibly high standard. Public-assistance recipients in New York who are not eligible for the federal AFDC program are given Home Relief benefits financed jointly by the state and the client's locality. The state share of these costs is normally 50 percent, but increases from 50 percent to 60 percent for any social service district that can demonstrate an AFDC error rate of 4.5 percent or less. That has not proved to be an overly difficult task for upstate communities whose aggregate caseload permits intensive monitoring. In New York City, however, a marginal reduction-in-error rate is achieved only after enormous investments in detection and prevention programs which must survey a welfare population of 736,000—larger

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than most towns in New York State. We have made impressive progress in this area, and can point to an error-rate-reduction program that has brought the City from the 1973 level of 18 percent to the current 7 percent rate. But we are far from achieving the 4.5 percent rate specified as a condition for a 60 percent state share of program costs, and the $23.5 million saving that would bring. It is quite possible that a system as huge as New York City's can never reduce errors to 4.5 percent, or could do so only at a cost far beyond the proffered fiscal incentive.

No review of state-imposed mandates would be complete without reference to the Heart Law. This directive, first enacted in 1970, is the most frustrating example of how the legislature can tie the hands of local officials charged with the responsibility of administering a program in accordance with the best interests of their community. The law deprives public pension-fund trustees of the broad discretion traditionally given them, by erecting what the unions claim is an absolute presumption that every heart ailment reported by a retiring police or fire department employee was attributable to an "accident" in the course of his employment. Since the underlying retirement program authorizes a tax-free disability pension at three-quarters pay for such a condition, the Heart Law creates a huge potential loophole in the half-pay ceiling placed on standard pension benefits. The mandate reflects an overwhelming concern for the welfare of one group of City workers, who can develop a heart condition on the job but may also do so behind the lawn mower on a day off—a concern, I might add, which does not extend to the job title of Mayor, whose occupant routinely encounters stress throughout a far less predictable working day.

The City believes that fully half of the disability applications approved under the law's compulsion would not stand up under a thorough medical analysis of the ailment's actual cause. And while some may view the law as generous, it is a measure of generosity —amounting to $12 million to date—that the legislature did not choose to fund and that the City can ill afford.

Needed remedies

By cataloguing these arbitrary, restrictive, or counterproductive mandates I hope to have demonstrated both the complex demands confronting an urban chief executive today and the need for comprehensive revisions to the process by which such directives are formulated. A new mandate may appear to its authors to be a bold

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experiment in behavior modification for a worthy goal. But I do not think they view themselves as accountable for the hardship they may inflict on a particular locality. A superior level of government cannot, they would argue, be expected to anticipate every nuance in a far-reaching policy initiative. Indeed not—here lies the very reason why federal mandates must be flexible enough to accommodate local circumstances.

As the Mayor to whom those who must endure the hardship of irresponsible mandates look for relief, I can no longer accept the monotonous refrain that "it's up to Washington to correct its errors." It is long past time for the system to become responsive to the needs of those it purports to regulate, and for effective controls to be placed on the mandate machinery.

I do not claim to offer more than a rough outline for a modest measure of protection from the kinds of excesses now faced by a city like New York, but urge that prompt and careful consideration be given to the following proposals:

1. All mandates should include waiver provisions that afford an appropriate measure to recognition of a locality's efforts to address the objective through alternate means, or to integrate the required program with competing or complementary policies. New York, in several instances, commenced negotiations seeking administrative relief only to be met with an almost reflex hostility to allowing the slightest relaxation or modification of the mandate. This attitude may reflect a natural bureaucratic concern that the first variance breeds a collection of exceptions that will carve the underlying statute into an unworkable patchwork. But the administrators of these laws must be directed, by statute or Executive Order, to accommodate requests for waivers authorizing additional time or modified procedures from communities who offer reasonable evidence of an unfavorable impact.

2. Special consideration should be given to cities whose local revenue-raising and expenditure powers have come under the control of external authorities. It may be some years before we can measure the success of current efforts by all three levels of government to insulate the American metropolis from the twin cycles of declining revenues and spiraling costs. It makes absolutely no sense for the federal and state authorities to nullify their own ambitious urban assistance programs through the inflexible application of arbitrary mandates and the horrendous price tags they carry.

3. Action on any proposed mandate should be deferred until a report has been prepared on both the potential impact it would

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have on local government expenditures and the state of existing or proposed technology available to achieve timely compliance. Agencies such as the Congressional Budget Office and the Office of Technology Assessment are already in a position to perform an objective analysis of this nature, which could be summarized in the reports that accompany legislative proposals brought to the floors of Congress. Such a procedure would assure that the mandate makers are fully informed of the potential shock waves their action may send throughout affected communities.

4. No mandate should be imposed unless alternative methods of compliance are offered, with the final selection left to local option. In the exceptional case, in which mandates' authors are convinced that a single standard and procedure must be imposed, they should authorize variations in the timing of and approach to compliance within appropriate parameters, proportional to the degree of hardship or potential program failure among affected communities.

5. Finally, it is of overriding importance that every mandate be accompanied by financial aid sufficient to achieve compliance. The aggregate tax-levy resources which must be committed to all of the federal and state mandates presently imposed on the City amount to $938 million at a time when we must identify $299 million in net-expense budget reductions for fiscal year 1981.

Throughout its history, this nation has encouraged local independence and diversity. We cannot allow the powerful diversity of spirit that is a basic characteristic of our federal system to be crushed under the grim conformity that will be the most enduring legacy of the mandate millstone.

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Women in combat?

SETH CROPSEY

LAST February, when President Carter proposed registering 19 and 20 year olds in case a draft were needed, the debate skipped over questions about mobilization times or the military's ability quickly to teach conscripts how to use sophisticated weapons. It focused instead on whether women as well as men should be required to register. In the heated debate which followed, the Pentagon was the chief non-participant—for the simple reason that its policy towards women was already set. Since the All-Volunteer Force (AVF) replaced conscription in 1973, the Defense Department has moved steadily—sometimes by itself and, at different times, in the face of judicial or congressional decisions—to abandon every distinction between the functions of male and female personnel. As a result the U.S. has surpassed all other nations in positioning its women soldiers very close to possible combat areas. American women today serve aboard Navy supply ships in the Indian Ocean, and in the Army at European posts where they would surely fight and die in war. Air Force women fly airlift missions around the world and would presumably be in great danger if an enemy tried to cut the flow of materials to a war zone.

Defense Department policy makers, however, are not satisfied with the progress which has been made up to now. The Air Force, for example, would like to develop information about women in

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combat by training a sizable number of them as fighter pilots, while Army researchers are interested to learn how units with at least 50 percent women fare under prolonged conditions of simulated combat. Indeed, the Pentagon has stretched itself considerably with all manner of testing and data analyses over the past four years to show that women belong in battle as much as men.

Although women have sometimes fought in times of utmost national peril, no country has ever fashioned its military to include them as combatants. Since that is precisely where our military planners are moving, it is correct to say that a truly radical social experiment is underway. This article is an account of how the Pentagon finds itself in this strange role.

Seven years ago, when the draft ended and the All-Volunteer Force began, military planners, fearing shortfalls in recruiting, looked upon women as possible employees. Although it was seen that the Equal Rights Amendment (ERA), and the women's movement in general, might someday lead to difficult questions about combat, these were passed over in favor of more bodies. The idea of women performing a wide variety of jobs in the military was not new. Some 350,000 women served in World War II, mostly in administrative and nursing jobs. They were also used as airplane mechanics, gunnery instructors, aircraft controllers, and a small number ferried military aircraft. The AVF's planners were as aware of women's successes in these positions as they were concerned over the number and quality of male recruits for the volunteer force. Between today and 1990 the size of the 18-year-old male cohort will drop over 20 percent. But the quality of recruits was and still is a more immediate difficulty. In 1977, for example, a Pentagon official blamed literacy problems, medical ailments, lack of discipline, and poor performance, as the causes for a doubling—to 40 percent since the end of the draft—of recruits who were being discharged early. Signing up more women and broadening military opportunities for them appeared as one practical remedy. The pool of manpower—a word still, although inexplicably, used in the Pentagon—would be doubled. Furthermore, high-quality women turned out to cost no more to recruit than low-quality men, the measure of quality being a high school diploma.

Added to practical considerations was the political judgment of a few military leaders, among whom Elmo Zumwalt, former Chief of Naval Operations, ranked highest and spoke loudest. Zumwalt reckoned that ERA was just around the corner and took up the cause of women in the Navy. He gave orders facilitating women's

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promotion and opening up new job categories. Zumwalt saw these steps as the way to follow society's lead. "Foremost among our accomplishments," he wrote in a 1973 memo to Navy Secretary John Warner, "is the recognition that the sociological changes taking place in our society impact on the military." The idea had some merit. The military was not a popular national institution in 1973, whereas the women's movement seemed to have caught on. Perhaps some of the favor lost in Vietnam could be restored by expanding women's military role in a society apparently on the verge of enacting the Equal Rights Amendment. The practical result of agreement between this speculation and predictions of those who reached the same view by scientific calculations was a sharp rise in the number of women in the armed forces.

The end of "romantic paternalism"

In 1972 there were 45,000 women in the military, about 1.9 percent of the whole. Four years later the proportion exceeded 5 percent. Today there are 150,000 women in all the services, 8 percent of total strength. By 1985 that figure is expected to reach 12 percent. Indeed, it has taken very little time for the United States armed forces to establish a virtually unassailable superiority over all other nations in terms of both absolute numbers and proportion of women in its military. A Brookings study by Martin Binkin and Shirley J. Bach shows that in 1976 our military had 44 percent more women than the armed forces of 20 other nations, including the Soviet Union—combined!

For its part, the current Administration positively jumped at the chance to make the military the right place for more and more women. The speed with which the Carter Administration acted suggests that its policy was rooted at least as much in political calculation as practical judgment. Within a week of taking office—on January 27, 1977—Secretary of Defense Harold Brown ordered a study of women in the military as part of a larger appraisal of "manpower utilization." Included in the Secretary's directives, was one made to the individual services that they double their number of women by September 1982.

If women, though, were going to serve in greater numbers, wasn't it only fair that they should also have greater opportunities? That question arose in the Pentagon, as it did in other parts of society, because of the women's movement's success. Until the Carter Administration, it was chiefly answered by judicially activist

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responses to legal challenges from military women. In 1973 a married female Air Force officer, Lieutenant Frontiero, claimed a violation of due process because she had been denied the same benefits as male officers with dependents. The case is less interesting for its result than for the overall tone it placed upon the handling of military women's suits. The Court agreed that Lieutenant Frontiero was entitled to her benefits but it split on the rationale. Justices Brennan, Douglas, White, and Marshall opined that legal distinctions based on sex are "inherently suspect" and so discriminatory as to violate the Fifth Amendment's guarantee of due process. Justice Powell, the Chief Justice, and Justice Blackman, while agreeing that Frontiero deserved her benefits, argued that there was enough legal precedent to grant them without claiming that distinctions based upon sex violate the Constitution. That "precise question," wrote Powell, "has been approved by Congress and submitted for ratification by the States" where it is "under consideration within the prescribed constitutional processes." More flamboyant were the justifications Brennan issued in delivering the plurality opinion:

> There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of "romantic paternalism" which, in practical effect, put women, not on a pedestal but in a cage . . . As a result . . . our statute books gradually became laden with gross, stereotyped distinctions between the sexes and, indeed, throughout much of the 19th century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes.

The following year the Court dealt with a more substantial military issue. In *Schlesinger v. Ballard*, a Navy lieutenant, discharged for having failed twice within nine years to be promoted, claimed a violation of due process because women officers had 13 years to make the same advancement. By a 5-4 vote, the Court decided that the Navy's defense responsibilities entitled it to set its own promotion policy—in this case, allowing women more time for promotion because of restrictions on their service in combat or aboard most ships. In doing so, the Court turned away, by the slimmest margin, from the *Frontiero* holding that classification according to sex is, by the Constitution, inherently suspect. For the military, the case's significance was that the Court agreed to hear it at all. *Schlesinger v. Ballard* is a high-water mark in the Court's willingness to entertain military personnel questions.

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In 1978 Judge John Sirica relied on this opinion to reach a milestone decision affecting women in the military. A group of Navy women, some of them officers, challenged a federal law which barred women from serving on ships. This law, they said, violated the equal protection guarantee of the Fifth Amendment's due process clause. Judge Sirica agreed. His opinion is a model of judicial initiative clad in the appearance of restraint. The legislative background of the challenged law, he found, "tends to suggest a stationary purpose more related to the traditional way of thinking about women than to the demands of military preparedness." Judge Sirica saw traditional attitudes toward women much as did Justice Brennan. They had "harsh effects." Accordingly, the moral basis of the Sirica decision is directed at equalizing career opportunities in the Navy as well as the accompanying "numerous and economically significant veterans' benefits and preferences." The judge, however, acknowledged that this degree of judicial tinkering on so vital an issue as Navy personnel is no everyday affair. He rested the argument for deciding it on the Supreme Court's decision to hear the less militarily substantive issues in *Frontiero* and *Schlesinger*. From there it is a series of little steps to the determination that the law prohibiting women on Navy ships is the result of outmoded ways of thinking about members of the opposite sex.

But the greatest pressure to advance women's military careers and allow them into combat has come from the Carter Administration itself. According to Commander Richard Hunter, who assembled the Defense Department's reports on women's performance and status, policy directions on sexual equality in the armed forces came straight from the White House. "I think that the impetus came from the President himself," says Hunter. Presidential appointees to top civilian jobs in the Pentagon reflected this. The efforts of these appointees have been helped along by the traditions of military deference to civilian authority.

The Pentagon culture

The administrators who run the Defense Department comprise a large bureaucracy. With 23,000 employees, the Pentagon is well short of the size of the erstwhile Department of Health, Education, and Welfare's Washington staff, but somewhat bigger than the population of Augusta, Maine. The lines of authority flow in parallel routes from the civilian Secretaries of the Army, Navy, and Air Force and their military counterparts, the chiefs of these ser-

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vices. Secretaries choose great phalanxes of deputies, undersecretaries, deputy assistants, and so on. As the president is commander-in-chief, so his appointed secretaries hold an edge in overall policy decisions for the services. The deep respect for that constitutional tradition within the military distinguishes the Pentagon from all other bureaucracies in its responsiveness to executive wishes. With the addition of social goals to the military agenda, that becomes a matter of importance.

Secretary of the Army Clifford Alexander is one of the highest-ranking activist Carter appointees in the Pentagon. Born and raised in Harlem, Alexander worked in the Kennedy Administration before Lyndon Johnson made him chairman of the Equal Employment Opportunities Commission. He thereafter practiced law in Washington, D.C., where he failed to defeat Mayor Walter Washington in the 1974 Democratic mayoral primary.

Alexander has applied himself to doubling the dollar value of contracts granted by the Army to minority businesses. He has rejected questions about the Army's disproportionate number of minorities, arguing the more "alarming fact is that unemployment among black teenagers is running at 40 percent." The Secretary believes that the problems of women in the military parallel those of blacks—a matter of society's repressive attitudes and civil rights denied. "It is our responsibility," he told a television interviewer early this year, "to see to it that there is full opportunity for women, that their full talents to move ahead in the uniformed side can be, day by day, increased and enhanced." Under Alexander, the Army has come closer to putting women in actual combat posts than any other service. Facilitating this is the absence of legal restrictions on its placement of women. When the word was passed to "expand women's opportunities" the Army had only to shuffle its inside regulations. The definition of combat was changed from "proximity to front lines" to "job classification." Ninety-six percent of the Army jobs are now "unisex." Women are assigned to combat-support and combat-services-support units such as maintenance battalions, communications battalions, brigade-level headquarters, and some artillery units. Thus women would have combat *missions* without being in combat *units*. Commander Hunter is very certain that this would put women in battle, definitions notwithstanding. "These MOS's [military occupational specialties]," he says, "mean laying phone cable to forward observation posts, driving support vehicles up to the front, and fixing tanks and helicopters where they had broken down." The Army's own assessment is grimmer. It

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"accepts the fact that women may be exposed to close combat as an inevitable consequence of their assignments" and observes that "close combat involves engaging an enemy with individual or crew-served weapons while being exposed to direct enemy fire, a high probability of direct physical contact with the enemy's personnel, and a substantial risk of capture."

One of Secretary Alexander's appointments, who had an important hand in this decision, was Jill Wine Volner. Before going to the Pentagon as General Counsel of the Army, Ms. Volner, now Ms. Wine-Banks, a Chicago attorney, worked in the Justice Department, where she rose in time to become the only woman trial lawyer on the Watergate prosecutor's staff. When Ms. Wine-Banks, then 33, accepted the Army position, she noted that her candidacy was urged by various feminist groups and declared that "it's a real challenge" and a chance to "have an impact on things that matter." Speaking today about the Army's combat-policy shift, she explains that "with the change in concept of the battlefield, there ought to have been a redefinition of combat. I was part of the group which worked on redefining combat." Ms. Wine-Banks also expostulated against the Women's Army Corp (WAC) and played a key role in getting rid of it. She worked to settle out of court a suit the ACLU brought challenging two practices she had herself objected to, which involved requiring higher entrance standards for women than male recruits. The first change removed a category by which combatant/noncombatant distinctions would be maintained; the second dispensed with the more demanding requirements for the administrative and nursing positions women had traditionally held. Each action brought women nearer to complete equality in the Army. For Ms. Wine-Banks the question of women in combat is specifically one of women's opportunity to achieve the same ranks as men. "You have," she says, "to punch your ticket in the right places to be Chief of Staff." And, after a period of adjustment, "men would stop looking at women as women but as soldiers, and people will start to be judged by their ability —like with blacks."

Society's problems?

Succeeding Ms. Wine-Banks last fall as General Counsel of the Army was Sara Lister, who also began her military career at the Pentagon in 1977—after three years in private legal practice. She is no less committed to the cause of military women, and finds the thought

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that the WAC's were not "disestablished until 1978, horrifying." The new General Counsel regards the combat issue much as her predecessor did. Allowing women into combat, she observes, will give them "a chance to prove themselves." And though, for example, "congressmen have problems with women aboard ships, those are society's problems." Mrs. Lister's familiarity with such problems came from her two years in the Navy's legal affairs department.

For the Navy and Air Force, the integrated combat matter is complicated by the 1948 Women's Armed Services Integration Act which, among other things, proscribed women from combat assignments. Since 1978, high-ranking civilian appointments in those services have been lobbying Congress and the public to overturn the restrictions. On Valentine's Day, 1978, the Defense Department outlined a proposal to repeal the 1948 ban and allow the secretaries to "set policy for, monitor, and review the assignment of women within their respective departments." In May 1979, Deanne Siemer, General Counsel for the Defense Department, wrote House Speaker Thomas O'Neill a letter offering a specific bill to that effect. Mrs. Siemer practiced law in Washington for nine years before joining the Pentagon, where she labored to give women combat opportunities. Congress has yet to approve the legislation, but the proposal is illuminating both for a directness in forcing Congress to reflect on the results of its own actions (which have, in part, made the unisex combat issue a *fait accompli*), and an indirectness in stating why they should go the rest of the way.

Following the Sirica decision, an amendment to the 1948 act was passed that allowed women permanent assignments aboard hospital ships, transports, and supply ships. Mrs. Siemer remarks that this legislation had been sought as well to give female students at Annapolis the same summer cruise training as men. The Air Force situation raises like questions. Women at Colorado Springs, she notes, get "trained in most skills, including the aircrew positions of pilot and navigator." The accomplished deed is that women are being groomed for command at the service academies and those positions naturally mean training for combat and perhaps one day the real thing—a possibility that Congress did not think too deeply about when it opened up the academies to women in 1976. But the real point, after all, is to dispose entirely of congressional limits on women's service. Mrs. Siemer contends that this is merely an issue of efficiency. If the proportion of Navy women increases, she argues, and they are not permitted aboard all ships, then men will have to spend more and more time at the limited

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number of assignments to sea duty. And "the Navy has serious problems retaining qualified petty officers in large part due to excessive sea duty." But according to those who are leaving, low pay is a far bigger disincentive to reenlistment than long tours. A checkout girl at McDonald's in Washington, for example, makes more than a plane handler on the *Nimitz* flight deck. Given the Carter Administration's unwillingness to raise military pay and the clear attachment of many of its Pentagon appointees to women's issues, Mrs. Siemer's point is at best disingenuous. At different times her colleagues in the Navy and Air Force have been a lot more explicit in their support of sexually integrated combat. That support has been indispensable in getting the Pentagon to adopt the policy and propose it to Congress.

Antonia Handler Chayes is one of the older female Pentagon appointees. She received her law degree in 1953 and worked at various government, academic, and legal positions in Washington and Boston before becoming Air Force Assistant Secretary for Manpower Reserve Affairs and Installations in 1977. According to her Pentagon biography that office brought her "more responsibility for the 'people issues' in the Air Force."

In fact, Mrs. Chayes has championed the issue of women in combat with zest and an unmatched singlemindedness of purpose. When the Air Force decided to assign women to ICBM missile-silo crews, Mrs. Chayes, a strong supporter of the policy, declared that, "the announcement is a further recognition by the Air Force that women must have full acceptance and career opportunities in all fields." When the Air Force put women pilots aboard C-141 cargo planes a year and a half later, Mrs. Chayes—who had lobbied vigorously for this—drew out the implications: "Not only that women will serve as pilots on these aircraft, but that women, having served as pilots, will be able to move up to command and staff positions in the Air Force." As she sees it, those staff and command positions are what really count. Testifying before the House Armed Services Committee last fall, Mrs. Chayes made the point unmistakably:

> There must be policy changes to assure women that they can satisfy personal career goals and ambitions by moving up the ladder to senior management. . . . Combat roles are important to upward mobility in all the Services and exclusion has a very clear impact on attainment of most high-level management positions. . . . What we achieve by barring women from combat roles is an obstacle to career advancement.

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Mitzi Wertheim, a former Peace Corp official, is now Deputy Undersecretary of the Navy. Ms. Wertheim says, "they hate war in the Pentagon. They know what it is. The focus here is not to get in but to keep us out." Still, if war comes, she believes that women should be in the thick of it. Observes Ms. Wertheim, "This is not a lateral operation. You have to work your way up. Women have to have combat opportunities so that they can advance."

Echoing all this is the most outspoken advocate of the issue, Kathleen Carpenter, a lawyer in her mid-30's, formerly Special Counsel for Employment Practices at Norton Simon, now Deputy Secretary of Defense for Equal Opportunity. On account of her outspokenness, she is known in certain quarters of the Pentagon as "the unguided missile." Last year she opined that although men have greater upper-body strength, women have greater midsection strength—a fact which, she held, the military is accommodating by changing its structure, thus "enriching the work experience for all." A year ago Ms. Carpenter appeared at the House Armed Services Committee hearings to speak out in favor of "women's right to serve this nation in combat." Since the debate kicked-up by the administration's proposed registration of women, though, she and her like-minded colleagues have kept a lower profile. All of them admit that the issue is uncommonly emotional.

Emotions, however, run high on both sides of the issue and the women's advocates in the Pentagon are hardly dispassionate. Due to the considerable influence they wield, and the managerial military's disinclination to resist what stands in the paths of promotion, facts which ought to make policy makers consider the effects of their actions are overlooked.

Some practical problems

Consider a specific example. Women may be placed in support units, such as signal battalions, which direct communications in an entire division. In the same division, combat battalions have their own signalmen. But these men cannot be transferred to and from the parent signal battalion, where skills are more varied, since those positions are filled by women who, for the moment at any rate, may not serve in direct combat positions. This causes what one commander calls "equity problems." The Pentagon's social experimentors would doubtlessly solve this by putting women in all military posts, but evidence shows that the military women in the field are far less anxious for this to happen. Indeed, last year

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the number of women volunteering for the armed forces fell markedly—and at a steeper rate than that of male enlistments. A Defense Department official states that trying to put women in "non-traditional skills" caused the drop.

Senator Sam Nunn observes that many complaints have come to congressional attention since the military started expanding the use of women beyond traditional skills. The women themselves objected, claiming that "they were being put in jobs they had not anticipated and did not think they could perform." The *Army Times* last year printed a letter from a fire-control crewman in Germany. The crewman was a woman. She said that she had been " 'defeminized' to the point where it's depressing." Pointing to coed showers, latrines, and sleeping quarters, she concluded, "most of the problems we're running into aren't because the senior NCOs don't do anything. Their hands are tied. We're female soldiers and are to be treated the same as men." An article in the *San Diego Union* reported that enlisted women were unhappy, because their male shipmates viewed them as sex objects, and disgusted by the language used in their presence.

In other instances, some women and men in uniform are getting on famously: 14 percent of the Army's women became pregnant last year. Because of the overall number of women serving, regulations were changed so that pregnancy no longer brings compulsory discharge. Instead, the Army, in an Orwellian stroke, redefined human biology—calling the period during which a fetus develops in its mother's womb "a temporary physical disability." (It is at least ironic that the military whose job is to defend society should regard the biological continuance of its charge as a pathology.) Pregnancy is thus a question of lost time—actually, a lot of lost time. The average pregnancy carried to term causes 105 days absence. The statistic would be insignificant except for the movement of women into "non-traditional skills." In the Army, pregnant women are returned home from overseas posts after the thirteenth week. With manpower shortages what they are, this is a strain on units in the field. The captain of the Navy's first coed ship, *Vulcan* (dubbed by the press, "The Love Boat"), last year had to replace three pregnant sailors at very short notice before sailing to join the Sixth Fleet in the Mediterranean. Pregnant women in vital positions are simply a hindrance to what the military calls "operational flexibility."

The immediate excuse for overlooking these facts is the results of tests the military has been conducting which invariably confirm

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the tester's hypothesis. A Navy study shows that morale problems aboard ships resulting from public displays of affection between men and women can be ended by administrative policy forbidding such displays. (Research also shows that Navy wives are unhappy with the idea of their husbands at sea with other women for long periods of time—and some are upset enough to urge their husbands to leave the service.) The Army reports that varying the percentage of women up to its test limit of 35 percent does not affect the performance of company-level units. Another Army study holds that women who receive combat training as part of basic training do just fine.

But the chief reason for pushing on to the ultimate abandonment of sexual distinctions in the military is not based on efficiency. On this the courts and the Pentagon activists are in full agreement. Both see and speak of the matter in terms which reflect a far greater concern with equity and equality than with the armed forces' ability to fight and win wars. For the courts the question is whether the Constitution addresses the issues of the ERA. And for a large and influential cluster of civilian appointees, the military problem today is that women are not in line to become top managers—chiefs of staff. Combat-unit duty is the official route. Combat is also identified as a final haven of male exclusivity and, therefore, represents a challenge to be mastered. There is little dispute that women make valuable contributions at other military tasks, or that they could make even greater contributions, which, in an emergency, would free men to fight. The question is: *combat for women.* In addition to the evidence advocates have overlooked, there is a considerable body of opposing arguments.

"Charm" versus refinement

The universal sense of mankind, on any subject, is an argument—or, at least, an influence—not wisely disregarded. No other country has as many women in areas so near to actual battle positions as the United States. When Hitler invaded the Soviet Union, women were conscripted and some fought. After the war ended, they left the military. They were used because the country was fighting for its life inside its own borders. It had nothing to do with ideology. Today there are about 10,000 women serving in traditional jobs in the Soviet's 4-million-man military. The Israeli experience is similar. When the Arabs swarmed across the newly established state's borders in 1948, women in the Palmach, the pre-statehood

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defense force, and in the terrorist groups, Irgun and Lehi, fought—but only in the early stages of the war. As was true of the Soviet Union, Israel's existence was imperiled, in this case by invasion from three directions. Since that time Israeli women have not served in combat units. On their 18th birthdays, girls are eligible to be drafted into a *separate* part of the military, given the acronym CHEN, for women's corps. ("Chen" is also a Hebrew word that means charm.) The corps plays a purely non-combatant role, aimed above all at releasing a larger number of male soldiers to fight.

Accordingly, what the United States is doing to bring forward its military women looks peculiar to others. Binkin and Bach, who support the armed forces' sexual integration, admit in their Brookings' study that the Soviets probably interpret American initiatives to put women in combat as a sign of weakness. A military officer at the Israeli delegation in the U.S. says, "We don't put women in front lines because we don't want them killed. You don't have a draft or registration and you're debating whether to send women into combat.... You spend more time arguing about women than trying to mobilize the best men." A British colonel says of his nation's military, "we do have a lunatic lobby here which believes women should be issued weapons and put in the front lines—but no one takes them too seriously. We still think there's a difference between the sexes."

Feminist advocates in the Pentagon view the world's reluctance to arm women as a sign of outmoded thinking and, curiously, proof of repressive male domination that societies will not send women to fight. The strength of attachment to this doctrine is gauged by their refusal to consider any further *why* societies adopted and continue the proscription. The idea that men are more aggressive because of their stronger bodies or have a different psychic makeup is treated as proof of sexism and dismissed as inadmissible in discussions of policy. But the difference, or at any rate the perception of a difference, between men and women is not so easily put aside.

Since Congress opened up the service academies to women in 1975, discipline has eased. The severe treatment of underclassmen by older students, which the military schools regarded as essential to producing men able to make sound judgments in the stress of battle, is being modified. Rough language is out. So are harassment and physical punishment. James Webb, a graduate of the Naval Academy who fought with the Marines in Vietnam, quoted

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a classmate's view on women at the school in an article for the *Washingtonian* two years ago. "I like women at the Academy," said the man who is still on active duty, "they've brought a measure of . . . refinement to the place." Officials at the Academy, which sends 90 percent of its graduates into combat assignments, also did away with peer evaluations the year women entered. As a result, more weight is attached to quantifiable tests of performance—grades. This gives officers a greater say in picking students for leadership positions. And helping prove that women belong at Annapolis, and can lead men as well as other men can, is helpful to an officer's career. The drawback is that the manliness of an institution like the Naval Academy, and indeed of the military itself, is reduced—and it is that quality which attracts the best men to the officers' ranks.

A plain illustration shows how official favoring of women works against bringing forward the best men. In an admiring, festive story the *Washington Post* ran on women at Annapolis, the reporter also included the remarks of two midshipmen who thought that women would not make very good officers. The men were punished and invited to resign. Brad Taisey, a 1980 graduate who excelled at Annapolis, was appointed deputy regimental commander, second to a woman. Officially, he had the opportunity to turn it down—but he was told by the officers that if he did, he'd be out of the Academy. "Bringing in women," says Taisey, "reduced the most important standard of excellence to a matter of grades. Women stand at the bottom level in terms of leadership. The commander (a woman) I worked with was a good manager but she couldn't lead a group of guys to the bathroom." It is easier, of course, to keep these ideas silent, make no waves, be a good manager, and go along with official policy. On those who don't, the Navy comes down hard. Thus the Navy finds itself in the position of pushing aside men who are concerned about leadership and have the courage to state reservations about a policy which more than a few midshipmen who have not yet joined the career-oriented ranks of their superiors think is misguided.

But possible damage to the armed forces as a whole is the bigger problem. Antonia Chayes, Richard Hunter, and various legal authorities believe that the movement of women into the military until now has made an all-male draft virtually impossible. The ACLU has declared its intention to challenge such a draft were it to be instituted and it is a certainty that male-only combat duty would be a simultaneous object of legal action. Given the court's

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record on these questions it is a real likelihood that these suits would succeed. That would accomplish in a stroke all that the Pentagon's social experimentors have sought to achieve. It would also have a ruinous effect on the military, especially the infantry.

The military as social program

A fighting army is one of the best demonstrations of the dependence of a whole on its smallest parts. Those who have seen and who study war agree that in a basic combat unit men fight not so much for their country as for one another. Good plans, courageous leadership, and superior weapons count for little if troops are disheartened or demoralized. At the unit level, as one would expect, demoralization is often caused by the usual antagonisms. But when all is well, the connections between men are *unusual.* They are based on a camaraderie which mixes friendship and duty. The psychologists call this "male bonding," and find it quite baffling. Those in the military who have not been overcome by this lingo refer to it as treating men not as men but as soldiers. Men who treat each other as soldiers fight without allowing their friendship to impair military judgments. The problem with putting women into this situation has nothing to do with their strength, their ability to become pregnant, their leadership, or anything else mentioned so far. It is simply that sexual attraction between men and women is as likely to destroy camaraderie as it is to produce constant dissension among men in a group. The difficulty is not, as some who object to women in combat have said, that men instinctually protect women, but that both men and women in couples will protect one another to the exclusion of what is good for the unit. Thus if women must serve in combat, they should serve in separate units.

There is, however, widespread resistance to the idea of women in combat at all. Even the Pentagon's women's advocates agree that the public has yet to accept the idea. "There is a recognition that we can only go so far without Congress and the people saying stop," says Jill Wine-Banks. Senator Nunn thinks that drafting women would cause an uprising. Leaving aside the question of just how far the Pentagon can go under its current civilian direction, the unpopularity of the women-in-combat policy generates a problem for officers who have women in units which would see action in war. Field commanders are (privately) concerned that if actual fighting began and women were killed, the public might

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insist on withdrawing them instantly. That would reduce manpower at the most critical moment.

In fact, the entire issue is only provable and important at the critical time—during war. And war is a time when experience is traditionally preferred to experiments, because it is a time when a nation can least afford to experiment. What is going on today at the Pentagon is a social experiment of unprecedented magnitude and unimagined consequences. The fact that it is being conducted for reasons which are essentially non-military, and at a time when so many grave problems with the armed forces have been coming to a head, shows that, at least among civilian policy makers there, war is taken lightly, or viewed as so remote as to be impossible.

In April the Navy had to tie up a front-line ship, the oiler *U.S.S. Canisteo,* because there were not enough skilled sailors to operate it. With the exception of the 82nd Airborne Division, all Army units in the continental U.S. are now understrength. Attrition rates are running at all-time highs. In a recent Skill Qualification Test, the Army's basic report card on combat skills, 2 percent of 371 tank turret and artillery repairmen passed. Fourteen percent of a sample of 1,574 artillerymen also made it. It would be encouraging to learn that the civilian directors at the Pentagon were as devoted to maintaining a competent military as they are to sending women off to fight.

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How to save the All-Volunteer Force

CHARLES C. MOSKOS

THE All-Volunteer Force is on the ragged edge of survival. Since the end of the draft in 1973, the military services have been hard pressed to meet recruitment goals. Enlistment shortfalls are keenly felt among ground combat units and aboard warships. Educational levels of new recruits continue to drop. More than one in three service members do not complete their initial enlistments. A growing number of skilled technicians are leaving the military; retention of qualified people in the career force has become an acute problem. Army Reserve and National Guard units are some 125,000 members short of the goals set by Congress. The Individual Ready Reserve—soldiers with prior military training who are to be available in the event of mobilization—is more than 300,000 under stated requirements.

The most important, but least commented upon, effect of the shift to the AVF has been the sharp decline in the peacetime military-force level, from over 2.6 million on active duty in the early 1960's to slightly over 2 million in 1980. To maintain an active-duty force even at this reduced level, with attendant under-strength units, the military must recruit around 350,000 enlisted persons annually. In 1979, a year with a 20,000 enlistment shortfall, the Army recruited 142,000 persons, the Navy 86,000, the Air

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Force, 67,000, and the Marine Corps 41,000. Over 80 percent of enlisted military entrants are non-prior-service (NPS) males.

It is little wonder that the reintroduction of draft registration in the summer of 1980 was seen by many as signaling a return to full-fledged conscription. Yet for seven years the Defense Department reported that the AVF was working well and, indeed, was attracting a quality of youth as good if not better than that of the draft era.

The social composition of the All-Volunteer Force

Mental Group and Educational Levels. It has been a stock argument among defenders of the AVF that the mental quality of recruits, as measured by aptitude tests, has improved over that of the draft era. There was always a certain amount of misdirection in this argument. No one could deny that the proportion of recruits in the top mental categories of I and II had declined, from 42 percent in 1964 to 27 percent in 1979. But this was countered by the purported drop in those scoring in mental category IV, the lowest from which the military is allowed to recruit. In testimony given in the House in early 1980, the Assistant Secretary of Defense for Manpower reported that the aptitude tests may have been "misnormed" and that category IV recruits may be increasing rather than decreasing. Conclusive evidence on this issue is not yet available but revised test results could further reinforce concerns about the quality of enlisted recruits.

Data on educational attainment is more clearcut, and trends show major differences among the services. Over the course of the all-volunteer era, the number of non-prior-service males with a high school diploma has averaged about 88 percent for the Air Force, 71 percent for the Navy, 62 percent for the Marine Corps, and 58 percent for the Army. There are studies which show, moreover, that among high school graduates who do enter the military, the tendency is to come from the lower levels of their graduating class, especially for those entering the Army. But even if we look only at the high school completion rates, it is indisputable that the educational levels of male enlistees in the all-volunteer Army are far lower than either the equivalent civilian population or the Army entrants of 1964, the last year before the war in Vietnam. Since the end of the draft, an average of over 40 percent of NPS males have not had a high school diploma, (See Table I, on the following page.) compared with 25.4 percent non-graduates among 19-year-old males

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in the general population, and 28.7 percent of draftees and 39.9 percent of volunteers in 1964. The contrast between the educational levels of the all-volunteer Army and the peacetime-draft Army is even greater when considered in light of the proportional increase in male high school graduates from 66 percent of males aged 18 to 24 years in 1965, to 76 percent in 1977. Thus while the national trend has been toward a higher percentage of high school graduates, the percentage of graduates among Army enlistees has been dropping.

TABLE I: *The Educational Levels of Army Male Entrants (non-prior-service)**

	SOME COLLEGE	HIGH SCHOOL GRADUATE	NON-HIGH SCHOOL GRADUATE
1964 Draftees	17.2%	54.1%	28.7%
1964 Enlistees	13.9	46.2	39.9
FY 1975	5.7	48.6	45.7
FY 1976	4.1	51.5	44.4
FY 1977	5.1	51.1	43.8
FY 1978	4.5	65.5	30.0
FY 1979	3.2	55.4	41.4
All 18-19 Year Old Males (1978)	40.1	39.9	20.0

* Source: Accession data from Department of Army statistics. Civilian data from U.S. Census, Current Population Reports, P-20, No. 335.

The data in Table I also reveal an even sharper decline in the proportion of Army entrants with some college from the pre- to the post-Vietnam periods. Where 17.2 percent of the draftees and 13.9 percent of the enlistees in 1964 had some college, the corresponding figures in the all-volunteer Army have been around 5 percent. It is startling to learn that in 1980 among first-term enlisted personnel in the entire U.S. Army there were only 276 college graduates (out of 339,678 members), and only 25 college graduates in all the combat arms (out of 100,860 men).

Racial Composition. The various services differ in their racial composition. The pattern has been for the Army to have the highest proportion of blacks, followed in order by the Marine Corps, Air Force, and Navy. In 1979 blacks accounted for 28.9 percent of the Army, 19.8 percent of the Marine Corps, 13.8 percent of the Air Force, and 9.7 percent of the Navy. These percentages include both officer and enlisted personnel. The issue of racial content has been most prominent in the Army, the largest of the services. As

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shown below in Table II, black participation varies by pay grade, although the overriding trend has been toward greater black participation at all levels. Blacks made up 11.8 percent of enlisted personnel in 1964, 17.5 percent in 1972 (the last year of the draft), and 32.2 percent in 1979.[1]

TABLE II: *Black Participation in the Army by Pay Grade, 1964-1979 (in percentages)**

	1964	1972	1979
Officers:			
0-7 and above (general)	—	1.8	5.2
0-6 (colonel)	.2	1.5	4.3
0-5 (lieutenant colonel)	1.1	5.3	5.3
0-4 (major)	3.5	5.0	4.5
0-3 (captain)	5.1	3.9	6.9
0-2 (1st lieutenant)	3.6	3.4	9.7
0-1 (2nd lieutenant)	2.6	2.2	9.4
Warrant	2.8	4.5	5.9
Total Officers	3.3	3.9	6.8
Enlisted:			
E-9 (sergeant major)	3.3	8.6	19.0
E-8 (master sergeant)	5.8	14.4	23.9
E-7 (sergeant first class)	7.9	19.9	25.2
E-6 (staff sergeant)	12.2	23.9	22.8
E-5 (sergeant)	14.8	16.9	28.6
E-4 (specialist 4)	12.5	14.1	33.7
E-3 (private first class)	11.9	16.7	37.8
E-2 (private)	11.6	18.5	37.9
E-1 (private)	6.4	18.4	37.3
Total Enlisted	11.8	17.4	32.2

*Source: Department of Army statistics.

It is a well-recognized fact that the educational levels of blacks in America have trailed behind that of whites. But, the intersect of race and education is quite different among entrants in the all-volunteer Army. Since the end of the draft, the proportion of NPS black males with a high school diploma has been 65 percent compared with 54 percent for whites. In point of fact, today's Army enlisted ranks is the only major arena in American society where black educational levels surpass those of whites and by a significant degree. Whereas the black soldier seems fairly representative of

[1] Among Army senior sergeants blacks are considerably better represented in 1979 than at any earlier time. This reflects the black reenlistment rate in the 1970's being 1.6 times greater than that of whites. At the non-commissioned officer level, we can expect blacks to play an increasingly important and stabilizing role. Blacks continue to be underrepresented in the officer corps, with the partial exception of company-grade officers. A disproportionately white officer corps with a disproportionately black enlisted component will be one of the sociological considerations in the Army leadership of the 1980's.

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the black community in terms of education and social background, white entrants of recent years are coming from the least educated sectors of the white community. My stays with Army line units also leave the distinct impression that many of our young enlisted white soldiers are coming from non-metropolitan areas. I am even more impressed by what I do not often find in line units—urban and suburban white soldiers of middle-class background. In other words, the all-volunteer Army is attracting not only a disproportionate number of minorities, but also an unrepresentative segment of white youth, who are more uncharacteristic of the broader social mix than are our minority soldiers. Though put far too crassly, there is an insight in the assessment given me by a longtime German employee of the U.S. Army in Europe: "In the volunteer Army you are recruiting the best of the blacks and the worst of the whites."

Women. No change in the makeup of the AVF has received as much media attention as the growing number of women service members. An argument could be made that the margin of success in AVF recruitment has been in the sharp rise of female entrants, virtually all of whom until late 1979 were high school graduates. Before the Vietnam War, the utilization of women as military personnel was essentially token. In 1964, only 1.1 percent of uniformed personnel were female. In 1974, the figure had risen to 3.5 percent, and by 1979 it reached 7.5 percent. Projections for 1984 are for women to comprise about 12 percent of the enlisted force. The role of females has been expanding rapidly in the first phase of the AVF. That many male soldiers believe women shirk full responsibilities, and that the men end up with added workloads and late night shifts, may speak more to informal policy and personal preference than to innate capabilities. But in the years to follow the increase in female utilization will in all likelihood be much slower than anticipated. One important factor in this regard is the emotionally ladened decision as to whether women will be recruited for combat roles, even though there has already been an undeniable movement of females into jobs near combat.

There have also been difficulties in incorporating enlisted women into non-traditional assignments even outside the combat arms. These include rates of attrition much higher than for comparably educated males, the incidence of pregnancies, and the reluctance on the part of many women to accept permanent assignments outside clerical and health settings. There is also the fact that women in the military, as is true for all service members, are paid accord-

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ing to rank, not whether they are in traditional or non-traditional roles. Thus the appeal of higher salaries in non-traditional work that occurs for females in the civilian economy does not apply to military women. This is not to argue that the ceiling on female personnel has been reached, but that further expansion into non-traditional tasks will be very gradual. The 1979 policy change to accept female high school dropouts will only further complicate the utilization of women soldiers.

Marital Status. Though usually neglected by students of all-volunteer trends, there has been a significant change in the marital composition of the junior enlisted ranks. Since the draft's end, the proportion of marrieds at grade E-4—the modal junior-enlisted pay grade—has about doubled, to around 45 percent. The high incidence of junior-enlisted married personnel is all the more noteworthy in that it runs directly counter to national patterns, where the clear trend is toward later marriage. Today just about every major military base in the United States is ringed by trailer camps or shoddy apartment complexes where many of the young enlisted marrieds live an existence close to or below the poverty line. Overseas—such as in Germany, where young military couples live "on the economy"—they face cultural isolation as well as financial distress. Moreover, the new phenomena of intra-service marriages, and fraternization between officers and enlisted personnel of the opposite sex, have hardly been acknowledged, much less appraised for their effects on organizational readiness.

Econometrics goes rolling along

Ultimately, the problems of the AVF are not explained by the end of conscription, nor the declining youth cohort of the 1980's, nor a failure of service recruiters—who have accomplished a task of immense proportions. The crucial flaw has been a redefinition of military service in overly econometric concepts and models. The redefining process was given powerful expression by the 1970 President's Commission on the All-Volunteer Force—the Gates Commission. It is a theme that recurs in officially sponsored assessments of the AVF. This has contributed to moving the American military away from an institutional format to one more and more resembling that of an occupation. It has led to ignoring or glossing over the difficulties the AVF has confronted since its inception. The main fault stems from the economists' assumption that the armed forces are just another part of the labor market, and from

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an unwillingness to grasp the essential distinctions between military service and civilian occupations. It is this faulty theoretical underpinning, not the end of conscription, that has brought the American military to its present plight.

Sustained by their authority among civilian policy makers in the Pentagon (under both Republican and Democratic administrations), the econometricians have overcome the collapse of their arguments with remarkable ease. Though the econometricians do not say it in so many words, it is hard to miss in their analyses the premise that middle-class youth participation in the rank and file is irrelevant to AVF manpower issues. And so declines in the representativeness of the force (when Defense Department officials are candid enough to admit such declines) are dismissed if end-strength goals are met. If initial-strength targets are not achieved, then new ones are set forth with downward adjustments. If even these lowered goals are not met, it is argued that marketplace mechanisms were never tried. Instead of rethinking their propositions or admitting their earlier data were distorted, the econometricians admonish us to try more of the same, to continue to recruit at the margin to fill empty spaces. Under no circumstances, however, are their assumptions allowed to be challenged.

One of the main presumptions of the Gates Commission was that, with longer-term enlistments, there would be less personnel turnover than in a military system heavily dependent upon draftees and draft-motivated volunteers. This has turned out not to be the case. Since 1973 over 600,000 young people have been prematurely discharged from the military for reasons of indiscipline, personality disorders, job inaptitude, and the like. The striking finding is that high school graduates are twice more likely than high school dropouts to complete their enlistments. More revealing, this finding is virtually unchanged when mental aptitude is held constant. High school graduates from the lower aptitude levels are actually much more likely to finish their tours than high school dropouts in the higher aptitude levels. Overall attrition rates between the races are comparable, with the main exception that blacks in the lower aptitude levels do better than their white counterparts. Other measures of soldierly performance, such as greater productivity and fewer disciplinary problems, show precisely the same correlates as found for attrition rates. In the aggregate, high school graduates significantly out-perform high school dropouts. Possession of a high school diploma, it seems, reflects the acquisition of social traits (work habits, punctuality, *Sitzfleisch*) which make for a more successful military

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experience. The facts are also unambiguous that higher-educated soldiers do better across the board—in low-skill jobs as well as in high-skill jobs.

The military has always recruited large numbers of youth, white and black, who had no real alternative job prospects. It will always continue to do so. But present trends toward labeling the Army as a recourse for America's underclasses are self-defeating for the youth involved, precisely because they directly counter the premise that military participation is one of broadly based national service. From the 1940's through the mid-1960's, the military served as a bridging environment between entering low-status youth and eventual stable employment. Whatever successes the military had as a remedial organization for deprived youth were largely due to the armed forces being legitimated on other than overt welfare grounds, such as national defense, citizenship obligation, patriotism, even manly honor. In other words, those very conditions peculiar to the armed forces which serve to resocialize poverty youth toward productive ends depend directly upon the military not being defined as a welfare agency or an employer of last resort. It will be increasingly difficult for the Army to avoid such a characterization, even if unfair, unless enlisted membership reflects more of a cross-section of American youth.

The enlisted ranks, old and new

The rising minority content in the Army actually masks a more pervasive shift in the social class bases of the lower enlisted ranks. To what degree the changing racial composition of the Army reflects white reluctance to join an increasingly black organization is unknown, though it is surely a factor. Yet, I am unpersuaded that any significant number of middle-class youths of any race would join the Army, under present recruitment incentives, no matter what its racial make-up. That the disproportionately-white Navy and the racially-balanced Air Force also face recruitment problems indicates that there is more than racial content at work in attracting a cross-section of youth to serve in the AVF. It is a social reality that the combat arms especially will never draw proportionately from middle- and upper-class youth. But to foster policies that accentuate the tracking of lower-class youth into such assignments is perverse. To rationalize the outcome as the workings of the marketplace is duplicitous. This is not to argue that the make-up of the enlisted ranks be perfectly calibrated to the social

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composition of the larger society, but it is to ask what kind of society excuses its privileged from serving in its military.

By no means does being middle class necessarily make one braver or more able. There are many outstanding members in the AVF who have modest educational attainments. But our concern must also be with the chemistry of unit cohesion which requires an optimum blend of talents and backgrounds. Research evidence serves to confirm the observations of commanders and NCO's who remember the draft period: College-educated members enriched the skill level and commitment of military units in peace as well as in war. The distinctive quality of the enlisted experience starting with World War II was the mixing of the social classes and, starting with the Korean War, the integration of the races. This gave poor youth an opportunity to test themselves, often successfully, against more privileged youth. Such enforced leveling of persons from different backgrounds had no parallel in any other existing institution in American society. This was the elemental social fact underlying enlisted service. This state of affairs began to diminish during the Vietnam War when the college-educated avoided service; it has all but disappeared in the all-volunteer Army.

When I visit military units I am still impressed with the way things do get done. This is especially so in Air Force squadrons, ships at sea, and Army and Marine Corps units in the field. Yet there is a growing feeling among many NCO's and officers—and only some of it can be put down to normal grousing—that too much is being asked of too few people, and too much time is spent in handling recalcitrant enlisted men. In maintenance units, the main worry is about the dropping level of experience among technicians. In the ground combat arms, there is the acknowledgment that the "X-factor" middle-class soldiers bring to a unit is no longer there. The days when many enlisted men might be better educated than their sergeants and smarter than their officers are gone. One is struck by the fond reminiscences the older sergeants have of the university graduates who worked under them, and formed the shadow staffs—clerks in personnel, supply, and operations—which made things run smoothly at company and battalion levels.

In the barracks a level of raucousness, if not rowdiness, exists which exceeds the decibel count and temper of the pre-Vietnam Army, though fortunately the edge of racial hostility of the early 1970's has receded greatly. Not that the drafted peacetime Army was a sanctuary of decorum, but the tone of barracks life is no

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longer modulated by conventional middle-class standards as it was a decade or two ago. What is also happening is that, along with the growing number of enlisted marrieds, an increasing number of single enlisted members are moving off base. This is made possible by the fact that the real disposable income of junior enlisted members is now three times what it was during the peacetime draft. A visitor to a military base today can see clear signs of the young, single GI's new buying power—such as the automobiles in the parking lots. Despite the introduction of fast-food items and more varied menus, fewer and fewer soldiers are eating their meals in the "dining facility," as the old mess hall has been renamed. Overseas, the typical young soldier will purchase an expensive stereo system and save up to fly commercially to the United States to take his 30-day leave back home. It is hard to avoid the judgment that single soldiers' new discretionary income has undermined the quality of barracks life and unit camaraderie.

Another major outcome of the AVF has been a dramatic compression of pay scales within the enlisted force. In the 1960's, the basic pay of a sergeant major with 26 years of service was better than seven times that of an entering recruit. Since the end of the draft, that same sergeant major makes only three and a half times the pay of the recruit. The paradox is that this "front loading" of compensation toward the junior ranks, and changes to improve lower enlisted life (notably, fewer social controls and details, and more private and spacious barracks), cannot be appreciated by those now entering the service—they did not experience the old ways! Instead, junior enlisted members see little monetary or "lifestyle" improvement over the course of a military career, thereby reducing the likelihood of their choosing to remain in the service. Once upon a time sergeants measured their incomes and perquisites against those of the soldiers they led, and felt rewarded; now they see a relative decline of status within the service and compare their earnings against civilians, and feel deprived.[2]

[2] I have not dwelt on the officer corps within the AVF because officer recruitment, on the whole, has not been a problem area in the all-volunteer era. There are no shortages of officer applicants (though there is some muted concern about the quality of officer candidates at some of the academically weaker colleges). There are, however, some declines in career-officer retention, and pressing shortages of skilled personnel such as pilots, engineers, and physicians. The key professional issue within the officer corps is the sense of uncertainty as to whether the AVF can be made to work. Steps to improve the quality of enlisted entrants and the regard in which military service is held by the civilian society can only redound beneficially to the professional commitment and self-image of the officer corps.

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Reviewing the options

The difficulties of the AVF are essentially three: recruitment of sufficient numbers of qualified recruits, retention of career personnel, and the manning of Army reserve components. These difficulties have led to renewed talk of restoring conscription. A return to the draft would pose anew the question of who serves when most do not serve. Under present manpower requirements, less than one in five males would be drafted or otherwise serve in the military. If women were to be drafted, the proportion of youth serving would, of course, be only one in ten. One of the factors that operated favorably for the peacetime draft during the 1950's was that, because of the small youth cohort (the maturing "Depression babies") and the large size of the active force, over three-quarters of eligible men served in the military. This fostered a legitimization of the peacetime draft. In actuality, a higher proportion of men were drafted in the peacetime 1950's than during the Vietnam War.

To have a workable conscription also requires a national consensus as to its need, especially within the relevant youth population. Such a consensus does not presently exist, even in the wake of the events in Iran and Afghanistan. A draft could lead to turbulence on college campuses, and make ROTC units again an object of attack. Moreover, if compulsion is used, many will attempt to avoid induction, which will bring other problems. Even under a seemingly "fair" lottery system, decisions would have to made which will corrode the induction system. These would include determination of conscientious objection, ersatz physical disabilities, and, given the current climate, claims of homosexuality. That the rate of non-compliance under the reintroduced draft registration will probably remain a mystery forever does not inspire confidence in the probability of an equitable system of conscription. In any event, only a small and, by definition, unlucky minority would ever be called to serve. Although I am one of those former draftees who look upon conscription as a moral good, a bungled draft would leave us in worse straits than even the undesirable status quo. In a peacetime situation, we must make the AVF work rather than find ourselves embroiled in a debilitating draft controversy.

Granting conscription is not in the offing, what management steps could be taken to improve manpower utilization within the all-volunteer framework? Unfortunately, few proposals in this vein—a kind of sub-optimal approach—address the core issue: getting young, qualified men into the combat arms and related tasks. Neither

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lowering physical or mental standards, nor increasing the number of women, nor greater reliance on civilian personnel, suit the imperatives of the combat arms. Large raises in military pay for lower enlisted personnel, a central Gates Commission recommendation, were the principal rationale to induce persons to join the AVF. This has turned out to be a double-edged sword, however. Youth surveys show that pay motivates less-qualified youth (for example, high school dropouts and graduates with poor grades) to join the armed services, but has a negligible effect on college-bound youth. Any policy based on increases in pay to the lower enlisted will only aggrevate the present trend to recruit at the margin.

Underlying many of the difficulties of the AVF is a source of enlisted discontent that had no real counterpart in the peacetime draft era. This is post-entry disillusionment resulting from unrealistic expectations as to what the military would offer. The peacetime draftee never held high expectations on what he would encounter and therefore was not unpleasantly surprised; indeed, he might often—at least in hindsight—find the Army favorable on its own terms. In all-volunteer recruitment, however, a consistent theme has been the self-serving aspects of military life—that is, what the service can do for the recruit in the way of training in skills transferable to civilian jobs. Post-entry disillusionment speaks directly to the excessive attrition rate. The irreconcilable dilemma is that many assignments—by no means exclusively in the combat arms—do not have transferability to civilian jobs.

Making the AVF work

The central issue remains: *Is there a way to meet military manpower needs without direct compulsion or excessive reliance on cash inducements for recruits?* Or, to put it differently, is there a way to obtain the analogue of the peacetime draftee in the all-volunteer era? I believe there is. *First,* link federal aid for higher education to a program of voluntary national service, including military-reserve duty or civilian work. *Second,* introduce a GI Bill for the AVF. *Third,* construct a two-track military personnel and compensation system which differentiates between a short-term volunteer and one who makes a long-term commitment. The total costs of these proposals could easily be contained within present federal outlays, and would probably be lower.

Educational benefits now conflict with the AVF. The major barriers to more effective recruitment have been the elimination of the

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GI Bill in 1976 and concurrent expansion of federal assistance to college students. Congress has created a system of educational benefits which offers more to those who do not serve their country than to those who do. Under the Veterans Educational Assistance Program (VEAP), which replaced the GI Bill, the government matches, within prescribed limits, voluntary contributions made by service members. It is estimated that governmental expenditures for VEAP will be under $100 million annually. But, for 1980 alone, federal aid to college students will reach more than $4.4 billion, and this sum is projected to increase to over $7 billion by 1985.

The funds allocated to civilian students in major assistance programs in 1980 (in billions) were: Basic Educational Opportunity Grants, $2.275; Supplemental Educational Opportunity Grants, $0.370; College Work-Study Program, $0.550; National Direct Student Loan, $0.286; and Guaranteed Student Loan, $0.960. With passage in 1978 of the Middle Income Student Assistance Act (MISA), eligibility for Basic Educational Opportunity Grants can extend to families earning over $25,000 annually. Also under MISA, there is no need requirement for the Guaranteed Student Loan Program. The Work-Study Program is becoming a major source of graduate student support. A college student who can establish self-supporting status, moreover, is eligible for most federal assistance programs. Such governmental policies can hardly be thought of as part of a poverty program. In effect, we have created a GI Bill without the GI.

It is surprising that no public figure thought to tie such student aid to any service obligation on the part of the youths who benefit. A program of voluntary national service should be introduced on a step-by-step basis over the next five years. In the interim, those who enlist in military-reserve units or perform one year of civilian service would have priority for federal aid to college students; in time, participation in such national service would become a prerequisite for eligibility for federal college assistance. Only persons medically exempt from national service would not be held to this standard.

Provisions of a GI Bill for the AVF. Concurrent with linking federal educational assistance beyond high school to national service, we should introduce post-service educational benefits for members of the AVF along the lines and scale of the GI Bill following World War II. In this way maximum federal educational benefits will be allotted to those who serve on active duty. A per-

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son who enlists in the armed forces and completes his or her two-year obligated period of active duty would be entitled to college or vocational-school assistance as follows: 1) the costs of tuition and fees up to $3,000 per academic year in a private institution, or up to $1,000 per academic year in a public institution, for a maximum of four years; 2) a subsistence stipend of $300 per month while enrolled in school for a maximum of 36 months; and 3) such entitlement would depend upon an appropriate reserve obligation, say four years, following active duty.

On the bases of analyses conducted by congressional staffs, the maximum direct costs of such a program would be under 2 billion dollars per year. There would also be substantial countervailing reductions in the net costs thanks to a lower AVF attrition rate, smaller recruitment outlays, an end to combat-arms bonuses, and, most likely, fewer lower-ranking service members with families. With these savings, the real costs of a GI Bill would be under 1 billion dollars annually—*less than a quarter of present federal expenditures for college-assistance programs.* The yearly costs of a generous GI Bill, such as outlined here, would be much less than merely the annual *increases* projected for the next five years for federal college aid.

Citizen soldier and career soldier: complementary roles. The definition of military service in the all-volunteer context needs overhauling as much as does the machinery of military recruitment. The armed services can set up a two-track personnel system recognizing a distinction between a "citizen soldier" and a "career soldier."

The career soldier would initially enlist for a minimum of four years. He or she would receive entitlements and compensation in the manner of the prevailing system, but there would be significant pay increases at the time of the first re-enlistment and throughout the senior NCO grades. Most such persons would be trained in technical skills, though others would make up the future cadre in a variety of military specialties. In certain skill areas with extreme shortages, an extra re-enlistment bonus might be required. Additionally, a re-enlistment bonus might be offered in lieu of GI Bill benefits, or GI benefits might be passed on to family members. Alternatively, a career soldier's GI Bill might be used to take a "sabbatical" involving an engineering or science curriculum for future technical work in the military. The career force must also be given adequate housing and food allowances, and reimbursement for government-ordered travel. Steps such as these would go

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a long way toward the retention of the experienced and trained personnel required for a complex and technical military force.

The citizen soldier would enlist for two years of active duty (the term of the old draftee) and be assigned to the combat arms, low-skill shipboard duty, aircraft security guards, clerical work, and other labor-intensive positions. Except for clerical work, these are the kind of assignments in today's AVF where recruitment shortfalls, attrition, and desertion are most likely to occur. Active-duty pay for the citizen soldier would be lower—say by one-third—than that received by the career soldier of the same rank. Other than the GI Bill, the citizen soldier would receive no entitlements such as off-base housing or food allowances. This would reduce the frequency of marriage at the junior enlisted levels and restore unit cohesion in the barracks. Because there would be no presumption of acquiring civilian skills in the military, the terms of such service would be honest and unambiguous, thus alleviating a major source of post-entry discontent in the AVF. A college or graduate education, or vocational training, in exchange for two years of active duty would be the means to attract highly qualified soldiers who can learn quickly, serve effectively for a full tour, and then be replaced by similarly qualified recruits. Enlistment studies show a combination of short enlistments and educational benefits attracts a wider cross-section of young people than does higher entrance pay.

One feature of the two-track system presented here is that, because of the higher active-duty compensation in the career track, some of the two-year joiners will opt for the longer commitment once in the service. This will further reinforce retention in the career force. But the overwhelming number of citizen soldiers will undoubtedly leave active duty after two years and, if they take advantage of the GI Bill, go on to the reserves—a preferred outcome. For without much greater reliance on prior-service personnel, there seems to be no way to salvage Army reserve components in an all-volunteer context. The dominant economistic model of the AVF relies on the mistaken notion that long initial enlistments are always to be preferred over short enlistments. Thirty-six percent of all enlisted entrants in 1964 signed on for four or more years compared with 62 percent in 1979. Yet with the high attrition rate, the personnel turnover is almost as great now as it was in the peacetime draft era, not to mention the differences in organizational costs between a service member who is prematurely discharged and one who successfully completes an obligated tour.

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The overriding strategy is to make governmental subsidies of higher education consistent with the ideal that citizen obligation ought to become a part of growing up in America. Such a realization would also clarify the military's role by emphasizing the larger calling of national service. The architects of the present AVF have failed to consider these kinds of issues, but we must. The AVF, if it is to survive, must attract those middle-class and upwardly-mobile American youths who would find a temporary diversion from the world of school or work tolerable, and perhaps even welcome.

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The "kid vid" crusade

SUSAN BARTLETT FOOTE
AND
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About two years ago, at the urging of child advocates, the Federal Trade Commission (FTC) spearheaded a crusade to protect children from exploitation by television advertising. The FTC staff proposed rules that would have resulted in a ban of most children's television advertising. The FTC primarily premised its far-reaching rulemaking proceeding on "unfairness," a standard with few legal precedents, rather than on "deception," a well-established standard with more confining limits. Like a true believer, Michael Pertschuk, the chairman of the Commission, led his followers into battle: "Setting legal theory aside, the truth is that we've been drawn into this issue" because of the "conviction" that "children's advertising is inherently unfair."

On June 1980, President Carter reluctantly signed legislation that cuts out the primary legal foundation selected by the FTC for its children's advertising proceeding—"unfairness" can no longer be the basis for the regulation of commercial advertising, whether for children or for adults. The law also introduces a new congressional encroachment on the authority of the independent agency, for it includes a "legislative veto" that Carter claimed was "both unwise and unconstitutional."

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Crusades often have proved calamitous, particularly for the crusaders. In the 13th century, thousands of young people were lost, shipwrecked or sold into slavery as a result of the first Children's Crusade. The consequences for the FTC of its children's crusade were also, if not equally, disastrous.

Even its supporters acknowledge that the FTC made a serious political miscalculation. Its children's television proceeding provoked a massive industry counterattack and contributed to an anti-regulatory tide in Congress. Called upon to defend its "kid vid" proceeding, the FTC squandered substantial political capital. Wounded and reeling politically, the agency found itself attacked from all quarters, and Congress sympathetically considered other, less meritorious, business grievances against the agency. Only intervention by the White House saved the FTC from even more ruinous legislative action.

But it would be wrong to view the "kid vid" proceeding as merely a political misjudgment in which the FTC's faithful were undeservedly overpowered by industry's infidels. For one thing, the low quality of the FTC's staff work contributed to the defeat. Substituting rhetoric for careful analysis, the FTC glossed over the economic and constitutional implications of the proposed bans. More importantly, the FTC's crusade was fundamentally misguided. Under the cover of its unfairness theory, the FTC exaggerated its proper role with respect to child rearing and tried to impose its own notions of what is "good" for children on all American families —despite the lack of social consensus with respect to either the nature or extent of the underlying problems with commercial television.

Congress has effectively suspended for now the FTC's children's advertising proceeding. By October 15 of this year the FTC's staff will make recommendations to the Commission about the future course of the proceedings. The smoke has barely cleared from the legislative battlefield, but it is not too early to ask: What happened? How did the FTC go wrong? What future action is possible?

The FTC joins the cause

A mass medium—especially when it is of recent origin—provokes anxieties about its impact on children. In the 1930's and 1940's, many feared the effects of comic books and movies on the young. During the past decade, critics have focused on television because pre-schoolers apparently spend more time watching television than

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on any other activity, and school-age children may log more hours in front of the set than in school. A variety of social ills are attributed to television. It is claimed that T.V. inhibits the intellectual and emotional development of children who prefer sitting in front of the tube to reading or playing. Violent programs are said to contribute to juvenile delinquency, while manipulative ads warp the diets and values of the young. In sum, television is creating, according to critics, a generation of fat children with decaying teeth who are intellectually passive, prone to violence, and profoundly materialistic.

In 1968, Action for Children's Television (ACT) founded a movement to change television for the young. ACT looked to the federal government for help, and initially petitioned the Federal Communications Commission for a wholesale ban on all T.V. advertisements aimed at children, on the grounds that the commercial-sponsorship system spawned programming that inculcated children with inappropriate values and failed to stimulate them intellectually. ACT's petition to the FCC was denied, but the organization did not give up. Instead, it turned to the FTC and focused on the ads themselves. As a result of ACT pressure, industry cut advertising time on children's shows, and eliminated "host selling," in which a program character pitches a product. The FTC stopped Spiderman (a children's "hero figure") from endorsing vitamin tablets made by Hudson Pharmaceutical Corporation.

Perhaps encouraged by limited successes, and knowing that Michael Pertschuk, the new chairman of the Federal Trade Commission, was sympathetic, ACT petitioned the FTC in April of 1977 for mandatory across-the-board rules banning all televised candy advertising aimed at children. The Center for Science in the Public Interest filed a companion petition requesting the prohibition of advertising of sugared snack foods, including heavily sugared breakfast cereals. Referring these petitions to the FTC's Bureau of Consumer Protection for study, Chairman Pertschuk promised that the FTC would mount a "fundamental assault" on children's television advertising. In a speech to ACT, Pertschuk condemned the "moral myopia" of industry. He said advertizers "seize on the child's trust and exploit it as weakness for their gain."

The Chairman's fervor was infectious, and in early 1978 the FTC staff presented sweeping recommendations to the full Commission. The staff proposal was complicated and confusing. A specific rule was never proposed but the report pointed the agency toward

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rules that would: 1) ban all television ads aimed at children under 8 years of age; 2) ban television ads aimed at older children 8 to 12 years for those sugared products most likely to cause tooth decay; and 3) require those advertisers of all other sugared products to run "counter-ads" to encourage older children to eat nutritious foods and properly care for their teeth. The commissioners authorized a rulemaking proceeding; the agency held six weeks of public hearings on the proposals in early 1979.

Many groups and individuals participated; some expressed a variety of concerns and complaints about television programming, candy, children's diets, and T.V. ads. Not surprisingly, the industries that were threatened by the staff's proposed remedies began a counterattack. Candy, cereal, and toy manufacturers, advertising agencies, independent broadcasters, the three national networks, and trade associations representing many industries, fielded an army of lawyers and expert witnesses. Over 200 witnesses testified and a voluminous (if inconclusive) record was created.

The industry response was not restricted to the FTC hearing room. Coalitions of industry groups concurrently filed several lawsuits. One of these claimed that Chairman Pertschuk was biased and should be disqualified from participating in the children's advertising rulemaking. (The District Court agreed; the Court of Appeals reversed; Chairman Pertschuk then "voluntarily" withdrew.) Another challenged the procedural innovations specially adopted for the "kid vid" proceeding.

Industry also launched an effective attack in Congress. Beginning in 1978, Congress ended regular funding of the FTC, thus requiring the agency to live hand-to-mouth on temporary appropriations. More drastic action came in November 1979 when the House passed an authorization bill that contained a series of amendments that would have killed funeral industry regulations, stopped on-going investigations into agricultural cooperatives and registered trademarks, and given either house a "legislative veto" on future rulemakings. Several months later, in February 1980, 67 Senators (including erstwhile allies such as Bayh, Cranston, Eagleton, and Stevenson) voted to terminate the children's television-advertising proceeding. The Senate bill would have also stopped the FTC's investigation of both the insurance industry and private standard-setting organizations, and contained a veto provision that would have required concurrence of both houses of Congress and the President to override any future FTC rules.

The conflicting House and Senate bills went to a conference

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committee earlier this year. The conferees were at loggerheads until they met with President Carter in mid-April. At this meeting, an unhappy President indicated that he would accept some form of "legislative veto" but would oppose a bill that eliminated any ongoing Commission proceeding. The conference committee's compromise package, now signed into law, contains a two-house legislative veto. This controversial provision requires the Federal Trade Commission to submit any proposed rule to Congress before it becomes effective; Congress will then have 90 days to kill the rule by a concurrent resolution adopted by both houses. It also effectively suspends the children's advertising proceeding, forbids FTC regulation of commercial advertising by rules based on the grounds of "unfairness," and limits future FTC rules to deceptive advertising only. Because the agency had based its rule on "unfairness," the new law requires the FTC either to abandon the children's advertising proposal or to start over again with a new and well-defined rule resting exclusively on deception.

The fairness of children's advertising

In the exercise of its mandate from Congress to rid the marketplace of "unfair or deceptive acts," the FTC has long been concerned with misleading advertisements. In three respects, however, the "kid vid" proceeding was ambitious and pathbreaking. For one thing, the FTC went forward in a rulemaking proceeding, not in an action brought against a particular firm because of a specific advertisement. The staff wanted instead a rule that would apply across-the-board to all companies. Second, never before had the FTC sought to ban entirely broad categories of ads. Third, the FTC's action was not premised on a claim that the ads in question were untruthful or misleading in any conventional way, but instead on the vaguer notion that T.V. ads were "inherently unfair" to children. Unlike "deception" (the traditional basis for regulating commercial advertising), unfairness was a standard for which there was little legal precedent.

Unfortunately, the rigor of the FTC's arguments did not measure up to its ambitions. A close look at the proposals reveals that the FTC never adequately answered the obvious and fundamental question: What makes children's television advertising unfair? The FTC itself has acknowledged that the unfairness test is elusive. The most explicit statement of the test is found in the "cigarette rule," which in fact was premised on both deception and unfair-

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ness. Based on the Surgeon General's findings, that rule required substantial disclosure of health hazards on cigarette labels and in ads. Although the "cigarette rule" itself stated that it should not be regarded as a precedent compelling similar regulation of candy, it arguably stands for the proposition that it is "unfair" not to make disclosure of health hazards in ads for products the consumption of which causes "substantial injury" to consumers—that is, products for which there is a compelling showing of some harm.

The FTC staff suggested two separate reasons that T.V. ads were harmful, and therefore unfair to kids. There was one rationale for young children and another for older children. Neither was persuasive.

For young children (apparently those under 8 years of age) the Commission argued that all T.V. advertisements were "inherently unfair" because this group was unable to grasp the fundamental nature and purpose of advertising. Obviously, the purpose of all advertising is to persuade the target audience to buy the advertised product. The Commission suggested that young children could not distinguish between the ads and the programs, comprehend the selling purpose of the ads themselves, or defend against the persuasive techniques of the advertising industry.

One could ask, of course, why the effects of ads on very young children should be a matter of governmental concern. Four-year-olds rarely buy products themselves; parents typically make the actual purchases. Since parents surely understand the selling intent of commercials, what's the harm? The FTC argued that the "unfair" ads made young children nag their parents to buy specific products. Innocent young children had unwittingly become the dummies of industry—like Charlie McCarthy and Mortimer Snerd they mouthed their master's message. The result, claimed the FTC, was a classic double bind: Refusals by parents would generate harmful family conflict; acquiescence could lead to unnecessary consumption. In short, all families with young children needed government's paternalistic help. Children with strong-willed parents needed government intervention to prevent conflict. Conversely, weak-willed parents needed government's help to protect them from their strong-willed children. In either case, the disease required the same government remedy—a ban on all ads aimed at young children.

The FTC never was able to document the "harm" to children whose parents refused their requests. Moreover, there was an inadequate scientific foundation for the FTC's underlying factual claims that children were manipulated by ads because of their

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lack of understanding. Few studies purport to measure children's understanding of commercial messages; most studies presented had been commissioned by various participants especially for the rule-making. Because the available studies employed different definitions of "understanding," "selling intent," and "persuasive intent," it turned out to be difficult to assess their often contradictory conclusions. The more forthright experts admitted that the evidence was inconclusive; many studies were based on unrepresentative samples, and some were distorted in order to reach a predetermined conclusion.

Quite apart from the problems of proof, the FTC never came to grips with the implications of its theory given audience demographics. To remedy unfairness, the FTC staff suggested banning all ads "directed to or seen by" young children. But the Commission staff never described *which ads* would in fact be banned. How far was the FTC prepared to go to protect children from unfairness? Most ads seen by young children are on programs viewed by large numbers of older people; for only a handful of programs do children under 8 make up a majority of the viewing audience. This fact creates a dilemma the FTC never resolved. Significant "protection" for the young would require a broad ban that would eliminate ads viewed primarily by older persons for whom, according to the FTC's own theory, a ban was unnecessary. A ban limited to programs that are *not* viewed by a substantial number of adults and older children would only eliminate ads on one or two "preschool" programs (such as *Captain Kangaroo*), and little else. A narrow ban, in other words, would avoid interfering with older viewers, but would do little to protect the young from most of the ads they see. The FTC never defined the limits, if any, to its proposed ban for the protection of young children.

Advertising and older children

For older children, the FTC based its charge of "unfairness" on a different ground—one that focused on the sugared products advertised. Arguing that sugar causes tooth decay, obesity, and a host of other ills, the FTC proposed a total ban on all ads to older children for "heavily sugared" products. For all other sugar products, the FTC would require advertisers to fund "counter ads" that would tell these children that sugar was bad for them and thus counteract the harmful effects of the commercials.

Once again there were proof problems. There were no scientific

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studies that could link the amount of sugar a child consumes (and hence dental cavities) to exposure to television commercials. There was plenty of scientific evidence on the record that sugar does indeed cause tooth decay. There was also evidence that television commercials persuade children to want the advertised products. But the FTC could not isolate the effect of television advertisements on sugar consumption. Moreover, it is very unlikely that such effects could ever be isolated because other variables inevitably come into the equation. For example, does advertising of sugared foods merely alter market share for similar products? Or does it increase overall sugar consumption? How do other factors, such as parental buying and eating habits or nutrition education in the schools, influence a child's sugar consumption? Obviously, no one proposed that children should be used as guinea pigs in controlled experiments to explore these questions scientifically. But in the absence of such evidence, many expressed skepticism about the FTC's claims. After all, children enjoyed eating sweets long before television. Is the level of candy consumption in the United States so different from the level in those countries where there are no T.V. ads for candy?

If the point of government intervention is the elimination of excessive sugar consumption by children because sugar products are nutritionally unsound and therefore "harmful," it is far from clear that the appropriate remedy is for the FTC to tinker with television advertising. There are more direct ways to prevent harm and reduce consumption. Like beer or vodka, should candy bars be sold only to adults? The FTC did not, of course, propose a ban on the sale of sugar products to children. Nor could it. Alteration of the American diet is not within the mandate or the expertise of the Federal Trade Commission. Instead, the agency apparently sought to reduce consumption indirectly—through regulation of advertising. Nevertheless, if an ad's "fairness" essentially turns on the FTC's approval of nutritional value of the food product being advertised, the agency is establishing itself as the arbiter of what is good for young people to eat, a role that outstrips that which Congress has delegated to it, and one the FTC has never before assumed.

The FTC also glossed over the constitutional objections to its proposed advertising bans. Why, after all, should the FTC be able to ban ads for food products that are lawful to sell to anyone? Or ban ads for young persons generally? Although not identical in scope to the rights of adults, children also have First Amendment

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rights. Moreover, since 1976, the Supreme Court has recognized that commercial speech has some constitutional protection under the First Amendment's free speech clause. While there is no constitutional protection for "false, inaccurate, misleading or deceptive" speech, court decisions in this area do not acknowledge any exception for "unfair" speech which is true and non-deceptive. Whether the Supreme Court would uphold bans on television commercials directed at children is difficult to predict. But government in our free society must proceed with caution before it silences speech, including commercial speech. Indeed, the ACLU opposed the ban on advertising for young children on the grounds that it was "too sweeping a remedy that catches protected speech in its net."

Apart from constitutional problems, the proposed remedies had other unaddressed implications. For one thing, widespread bans may have curtailed children's television programming, which is presently financed, almost exclusively, by the sale of advertising. Without commercial sponsorship, most programming for young children would probably disappear. This, of course, was exactly what some advocates hoped would occur. But it is hardly obvious that the FTC is the appropriate political institution to bring this about. In its rulemaking proceeding, the FTC refused to acknowledge that its proposed remedies might have substantial impact on children's programming, and failed to contradict industry assertions that children's programming would inevitably be affected.

There were also unexplored problems inherent in the FTC's counter-ad theory, particularly in light of the professed concerns for very young children. The counter-ads were intended exclusively as a remedy for older children, but younger children would also see them. If all advertising seen by young children is "inherently unfair" because they are too easily manipulated, wouldn't government-mandated advertisements encouraging kids to eat more carrots also be unfair?

What was wrong with the FTC's agenda?

Given these difficulties with the FTC arguments, the obvious question is why did the agency proceed so broadly, eschewing a more narrowly focused case-by-case attack based on deception? The answer probably has two dimensions. First, an across-the-board rule was no doubt seen as much more effective. Many inside the agency had grown impatient with attempts to regulate advertising by challenging individual ads. Experience suggested that by the

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time a case was litigated through the courts, the advertising agencies would have long since dreamed up new ways to sell the same product. More fundamentally, it would seem that the FTC's concerns went far beyond eliminating misleading ads from the marketplace. "Deception"—the traditional basis for regulating commercial advertising—probably could not be stretched far enough to deal with the reformers' underlying concerns with sugared products, the quality of programming, or the values inculcated by commercial television. The Federal Trade Commission never acknowledged that its goals were to eliminate candy bars from children's diets, to change drastically the economic basis for children's programming, or to socialize children to less materialistic values. Nevertheless, its legal theory and proposed remedies leave the impression that these broader concerns were part of the FTC's children's crusade.

In pursuing its crusade, with this broader agenda, the FTC no doubt believed it was acting in the best interest of children. However, what is best for children with respect to these social issues is largely indeterminate. Confident, long-term predictions concerning the consequences of alternative policies are impossible to make. Even more fundamentally, advocating what is "best for children" with respect to these broader social questions suggests a certainty of values about which there is in fact no consensus.

This indeterminacy with respect to what is best for children is plainly seen, for example, if one considers the legitimate concern that television advertising makes children too materialistic. To test that hypothesis one must first define what "materialistic" means, and specify variables that can accurately measure materialism. If such a variable is defined satisfactorily, one must have a model of how values are formed. There is no consensus today among social scientists about how children form their values. What we do know suggests that the process of value formation is extremely complicated and that the child himself, the child's family, peers, social class, and environment can call influence value formation. Given the large number of possible influencing variables, to determine the independent effect of television is very formidable indeed. How can one define a control group that is identical in all respects except for T.V. viewing habits? Most empirical studies do not have experimental controls but instead use either regression techniques or correlation techniques to relate one set of variables to some other variables. As responsible social scientists always point out, a correlation between two variables does not prove *causality*. Even if we were to prove that more materialistic children watch more

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television ads, this does not demonstrate that T.V. ads are the cause of greater materialism. It could, of course, be possible that more materialistic children simply like to watch ads. Demonstrating the long-term effects of different sorts of television programming or alternative dicta poses similar methodological problems.

Even if we assume that we could demonstrate the effects of advertising on children, there remain profoundly difficult questions: How does one decide whether these effects are good or bad? What should one do about them? Such questions obviously involve value judgments. About some effects there might be a clear social consensus. For example, if it could be demonstrated that television advertising substantially increases the number of children who poison themselves with aspirin, there would be little disagreement that this was a bad effect. The critical question would then be how best to minimize or eliminate this harmful effect. Ban aspirin advertising? Ban aspirin? Improve bottle caps? The costs and benefits of alternative courses of action would have to be considered in light of competing values.

But about other effects of T.V. on children there is far less social consensus. Some parents believe that their children "are what they eat" and focus enormous energy in insuring that their children eat only the "right" foods. Some parents object to meat; others to Sugar Pops or Hershey bars. Many parents believe that absent a compelling showing of harm, there is nothing wrong with their children eating food for simple enjoyment (as do they themselves). These parents approve of and purchase the foods children request. The same lack of consensus obviously exists with respect to television programming. A mass audience exists for *Laverne and Shirley* and *Charlie's Angels* because millions of families enjoy watching these shows. Nevertheless, it is clearly the case that in many upper-middle-class circles, one risks ostracism if one admits watching, or permitting one's children to watch, the standard fare offered by commercial television.

Much of the disagreement over advertising directed at children, then, really has to do with conflicts over values, not simply differing scientific predictions of consequences. Many of those who are most critical of advertising directed at children are primarily concerned about the effects ads have on the socialization of children—will children believe what the reformers think they *ought* to believe, or will they be manipulated and exploited into believing the "wrong" things? The critics and defenders are really fighting for the minds of the next generation. The FTC not only committed

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itself to a particular point of view, but was prepared to impose that view on all American families.

Who should decide?

In circumstances like these, in which the effects of alternative policies on children are uncertain and there is no social consensus about what values should inform the policy, the critical question is: *Who should decide?* To put it more precisely, how should power and responsibility for children be allocated? This question is critical because whoever enjoys the power of decision will in effect have sovereignty over the child and be able to influence not only the means but the very objectives of child rearing.

Answering the question "who should decide?" obviously involves judgments about the proper distribution of responsibility between the family and the state, and the comparative competence of various agencies of the state. In our view, parents, not the state, should be primarily responsible for deciding what is best for their children. Parents are in the best position to know what values they wish to impart to their children; they have more information about their own children and their individual needs; and they are economically and legally responsible for their children. This responsibility includes the right to control to a substantial degree what their children watch on television, buy, read, and eat. More than any government bureaucrat, parents live on a day-to-day basis with the effects of their child-rearing decisions. Moreover, by placing primary responsibility with the family, the child himself is more likely to have a voice in decisions.

Placing primary responsibility for decision making with the family will not, of course, satisfy everyone. Some reformers no doubt believe (though they are loath to say so) that many parents are not to be trusted to make the "right decisions" for their children. Moreover, it is suggested that many parents may want to change the T.V. viewing habits (or diet) of their children, but feel powerless to do so. The advertising ban, according to the FTC, was thus meant to "help" parents by making their job more manageable. But the cost of this "help" is the elimination of choices for other parents who share neither the reformers' values nor their assessments of the risks to children of using products advertised on television. The proposed bans would have impinged on the preferences of many parents, and the rights of some television viewers as well.

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Government's proper role

Although in our view the family, not the state, should have primary responsibility for child rearing, this does not mean that government has no role. In circumstances where parents' behavior poses a substantial danger to a child's well being—such as child abuse or neglect—the state has responsibility to intervene to protect children. Moreover, government can provide information and services to expand the choices for parents. But absent a powerful showing of a serious harm, it is not appropriate for an agency of the state to treat parents like children, and to mandate a uniform solution that does not reflect the values of many Americans.

From this perspective, the FTC was fundamentally off-base in its "kid vid" crusade. Seeing itself as the grand protector of children, the FTC sought to decide what is fair and then imposed its concept of fairness upon all American families. The FTC's staff report was like a lawyer's brief, hardly acknowledging the substantial disagreement among experts about the effects of T.V. advertisements. Moreover, the FTC can claim no special expertise with respect to children's diets, or the social or psychological effects of television programming. And most importantly, the agency can hardly claim the right to decide what values should inform child rearing practices in America. Nevertheless, under the banner of children's rights, this appears to be exactly what the FTC was attempting to do.

The Federal Trade Commission does have an important supporting role to play with respect to children's television advertising, especially in rooting out deception in the marketplace. There is a widespread social consensus that untruthful or misleading ads should be eliminated. Deceptive practices have no redeeming virtues, and regulation of deceptive advertising is clearly within the FTC's mandate. The agency has extensive experience in determining whether an advertisement has a tendency or capacity to deceive. The proper focus of such an inquiry is on the statements made in the ads themselves and their relationship to the products advertised. In this inquiry, under existing law, the Federal Trade Commission can take into account the capacity of the target audience, whether composed of adults or children.

This is not to say, of course, that regulation of children's television advertising on the basis of deception is without difficulty. While there are easy deception cases, the outer limits of deception are unclear. Hence an overzealous bureaucrat could abuse this label and improperly intrude into the family sphere. All prior reg-

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ulation has been case-by-case not through industry-wide rulemaking. Nonetheless, the new congressional legislation does not preclude the FTC from using rulemaking to forbid certain techniques or themes if they can be shown to be deceptive. In this respect, the Commission might well challenge certain present-day practices without necessarily overstepping its regulatory bounds.

This can be best illustrated by an example. Many thematic representations in children's commercials clearly convey, through visual and verbal statements, that consumption of a product (usually a sugared cereal) can overcome a child's anxiety or fear. Thus, if the child eats his Alphabits, he can make a mean spy, snake, or fierce bull disappear. If she eats her Cap'n Crunch, she will not get lost in the jungle. If they offer Honeycombs to big menacing stone people, the invaders will be pacified.

It is widely recognized that children are afraid of getting lost, or being threatened by big, irrational creatures. Thus, these ads are designed to manipulate a child's deepest fears. Many ads directed at adults have a similar element of psychological manipulation. But perhaps it could be shown that many young children (unlike adults) take ads directed at them *literally*. In fact, consumption of cereal cannot be shown to diminish fear or protect against getting lost, much less pacify alien beings. If the FTC can demonstrate that some thematic representations, technical manipulations, and appeals to fantasy that are pervasive in children's television advertising are taken literally by young children, then, as to this "vulnerable" audience, such ads might be characterized as deceptive under the Federal Trade Commission Act.

It is less likely that the Federal Trade Commission could successfully demonstrate that the failure to disclose material information about the proven deleterious effects of sugar on teeth is also deceptive. Some dangerous products—such as cigarettes—impose such substantial risks that the failure to disclose the potential harm might be fairly characterized as deceptive. On existing evidence, we suspect that the Federal Trade Commission could not build a similar case with respect to sugar products, notwithstanding the claims of the FTC's staff in the Commission's 1978 report. Nevertheless, it is certainly conceivable that someday the evidence will be sufficiently compelling so that the agency might well attempt to treat these products like cigarettes—stamped with some sort of warning concerning health hazards.

In addition to having the FTC police the marketplace for deception, there are other ways government can both respect the pri-

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mary role of parents and be involved with the issues implicated by the "kid vid" proceeding. With respect to diet and health, other agencies of government surely have a role to play. To the extent that foods pose health hazards, the Food and Drug Administration and the Surgeon General may need to provide more information to parents on diet and health. With respect to programming for children, there is much government can do to expand the alternatives available to families. Continued and expanded government support for non-commercial television provides an important alternative for parents who resent commercialism of network television. The FCC is also presently investigating means to augment the amount of educational programming for children on commercial stations. Perhaps most encouraging in the long run is the advent of cartridge television and video cassettes, which promise to increase enormously the breadth of programming available for children *and* parents.

Conclusion

One characteristic of our age is the impulse to identify something as a "social problem" and then look to government for a solution. In policy debates concerning children, various groups are often asking government to endorse either their values or their theories about how the world works. There is nothing wrong with this impulse, so long as it is recognized that not all "problems" as seen by reformers can be "solved" by government, at least without unacceptable social cost.

The reformers who initiated the "kid vid" proceeding have legitimate concerns about children's television. But the FTC adopted the reformers' cause uncritically, seeing itself self-appointed champion of American children, and children's television advertising as evil and exploitative. The agency proceeded to treat the children's advertising proceeding like a moral crusade. Crusaders have not historically valued diversity of opinion; they are typically undeterred by the lack of consensus. Rather, they take disagreement as an opportunity to proselytize, and if necessary, use coercion to force conversions.

Perhaps the most important lesson of the "kid vid" proceeding is the responsibility of those in government, before embarking on crusades, to ask: *Who should decide?* Posing this question at least brings to the surface the fundamental issues: the proper role of the family, the role of government, and the specific competence of a

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particular governmental agency. In assessing the recommendations of various interest groups officials could ask themselves three other sets of questions:

1. What predictions, implicitly or explicitly, are being made? How good is the evidence with respect to these predictions?

2. What values, implicit or explicit, are informing the recommendations? To what extent is there a consensus with respect to these values?

3. What are the implications of this proposal for the allocation of power and responsibility between the individual, the family, and the state?

Had these questions been seriously addressed within the agency in 1977, one suspects the FTC would have behaved differently. They should address them now, before once again mounting their chargers in pursuit of the children's cause.

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Adam Smith and the commercial republic

STEPHEN MILLER

In the past decade, the difficulties that have beset the American polity have naturally engendered a host of explanations. By far the majority of those whose business it is to diagnose "the American sickness," if there is such a thing, have argued that America is suffering because of the undue influence of "special interests." And they go on to claim that their curative prescriptions, which are usually hazy, are in accord with the "founding principles" of American government.

But the proper relation of "special interests" to the American democracy, as the founders conceived it, is not so simply put. Madison, Hamilton, and Jay—the authors, under the pseudonym of Publius, of *The Federalist*—were very much in favor of commerce. When Publius in *Federalist* 10 speaks of the different interests that "grow up of necessity in civilized nations," he is alluding to the different commercial interests that inevitably spring up in any nation when a significant number of its citizens engage in trade. Even when he speaks of a "landed interest," he means the interest of those engaged not in subsistence farming but in agriculture as a business. Publius, we might say, was pro-business, for he argues in *Federalist* 12 that "the prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most use-

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ful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares."

The sentiments are very much those of Adam Smith, an author read carefully by all the "enlightened statesmen" of the time. Like Publius, Adam Smith thought that a polity dedicated to the preservation of liberty could remain strong and stable only if commerce flourished. But there was more to Adam Smith than, as the conventional wisdom would have his role, the most famous exponent of the market system.

Would either Publius or Smith have subscribed to Herbert Hoover's contention that "the sole function of government is to bring about a condition of affairs favorable to the beneficial development of private enterprise"? The remark was cited recently by Arthur Schlesinger, Jr. to show how benighted the "conservative" apologists for capitalism have been. According to Schlesinger, these men have been enthralled by Adam Smith's notion of an "invisible hand," and as a result they regard "the private market as infinitely exact, sensitive, efficient and impartial in its resolution of our social and economic perplexities." Publius and Smith would not have dismissed Hoover's remark out of hand, as Schlesinger does, but they would have been puzzled by Hoover's dogmatic assertion that "the beneficial development of private enterprise" is the *sole* function of government. And Publius and Smith would have been equally puzzled by the idea that the private market can resolve all our social and economic perplexities.

Publius and Smith would have been puzzled because, in the 19th century, the debate about commerce and government changed, and the change naturally affected all subsequent debates. The debate was no longer about commerce but about capitalism, a term that was unknown to Publius and Smith. The 19th-century defenders of *capitalism* have little in common with the 18th-century defenders of *commerce*. Although both spoke of the science of political economy, the defenders of capitalism had a rather inflexible notion of what "science" means. Swearing allegiance to laissez-faire, they spoke of inviolable laws--arguing vehemently that if these "natural" laws were tampered with the economy would be ruined and liberty would be undermined. Both Publius and Smith, one is certain, would have been repelled by the dogmatism of a 19th-century liberal like E. L. Godkin, who regarded all deviations from laissez-faire as the beginning of the end of republican government.

In order to understand why Hamilton and Madison, the principal authors of *The Federalist*, stressed the importance of commerce

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in an extended republic, we need to look past the arguments of those who attacked laissez-faire as well as those who defended it (the arguments of a Schlesinger as well as a Hoover), and look at the arguments of Smith himself. For Smith was a disciple and friend of Hume's, and *The Wealth of Nations,* published in 1776, is the most exhaustive elaboration of the 18th-century "scientist's" point of view with regard to commerce. Smith, like Hume, was not a republican; he considered Britain's mixed constitution as the best possible form of government. But, like Hume, he thought that polities composed predominantly of men pursuing their interest by engaging in commerce were more likely than other polities to be stable, strong, prosperous, and free. And the authors of *The Federalist,* who read Smith as well as Hume, were persuaded by his arguments.

Commerce and order

The full title of Smith's book, *An Inquiry into the Nature and Causes of the Wealth of Nations,* is somewhat misleading, for it implies that Smith is solely concerned with explaining how nations can become wealthy. Smith does devote much of his book to attacking the mercantilist view of wealth; it is wrong, he argues, to say that a nation's wealth can be measured by the amount of precious metals it has in its coffers. A nation's wealth, Smith argues, is directly related to its productivity—the extent to which the "exchangeable value of the annual produce . . . exceeds that of the annual consumption. . . ." But for Smith productivity is not an end in itself. Productivity is desirable because it betters the condition of the vast majority of the people; it is also desirable because commerce—the activity that results in increases in productivity—encourages certain qualities in human nature to flourish, qualities that on the whole make for a stable, prosperous, and free polity. *The Wealth of Nations,* then, is less a treatise on economics than a treatise on what might be called the political philosophy of commerce.

Defending Smith from the charge that he had "converted the Chair of Moral Philosophy into a professorship of trade and finance," Dugald Stewart (Smith's first biographer) argued that there is a close connection between Smith's "system of commercial politics, and those speculations of his earlier years, in which he aimed more professedly at the advancement of human improvement and happiness." According to Stewart, *The Wealth of Nations* is a work of moral and political philosophy, and he concluded that "it is this

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view of political economy that can alone render it interesting to the moralist, and can dignify calculations of profit and loss in the eye of the philosopher."

As a political philosopher, Smith—like Hume—was writing under the shadow of Hobbes, the Hobbes who thought that liberty inevitably led to civil discord. Smith, like Hume, thought Britain was a relatively stable regime, but no regime was immune from the disease of violent faction. "Times of violent religious controversy," Smith says in *The Wealth of Nations,* "have generally been times of equally violent political faction." Smith thought such violent faction was probably a thing of the past in Britain, precisely because commerce had become so important. The expansion of commerce had made it less likely that people would become embroiled in religious controversy, less likely that they would join parties of principle rather than parties of interest. About Europe after the fall of the Roman empire, Smith wrote:

> commerce and manufactures gradually introduced order and good government, and with them, the liberty and security of individuals, among the inhabitants of the country, who had before lived almost in a continual state of war with their neighbours, and of servile dependency upon their superiors. *This, though it has been the least observed, is by far the most important of all their effects. Mr. Hume is the only writer who, so far as I know, has hitherto taken notice of it.* [Emphasis added.]

Thus, according to Smith, commerce fosters political stability. More specifically, it fosters non-violent factions, which is an essential condition for a liberal polity. "The good temper and moderation of contending factions," Smith says, "seems to be the most essential circumstance in the public morals of a free people."

That commerce fosters non-violent factions is one of the central points—*the* central point, to my mind—of *The Wealth of Nations.* Yet it is a point that Smith does not devote much attention to, which is perhaps why it was lost sight of in the 19th century. The defenders of laissez-faire fastened on another point of Smith's, one that he elaborates throughout *The Wealth of Nations*: Commerce flourishes best when government refrains from interfering in the economy. It is true, of course, that Smith praised the "invisible hand" of a market economy, but he was by no means a doctrinaire advocate of laissez-faire. As Jacob Viner has said, Smith "saw a wide and elastic range of activity for government, and he was prepared to extend it even farther if government, by improving its standards of competence, honesty and public spirit, showed itself

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entitled to wider responsibilities." According to one scholar, Smith would have endorsed Keynes' observation that "the important thing for Government is not to do things which individuals are doing already, and to do them a little better or a little worse; but to do those things which at present are not done at all."

Smith was, of course, in favor of free trade. He attacks the "hundred impertinent obstructions with which the folly of human laws too often incumbers" the operations of the market, impeding the "natural effort of every individual to better his own condition. . . ." Unlike a dogmatist such as Godkin, however, Smith thought the science of political economy must bow to public opinion. Speaking of a recently-enacted Corn Law, Smith says that "with all its imperfections . . . it is the best which the interests, prejudices, and temper of the times would admit of." Smith, unlike Godkin, has a strong sense of the constraints of political practice. If public opinion were flouted, not heeded, political instability might ensue. Smith realized that free trade was a radical idea for his time and he never expected most Englishmen completely to assent to it. But he did think that public opinion could, to some degree, be educated—that, indeed, his book might persuade many Englishmen that the wealth of Britain, and therefore the prosperity of all citizens, would substantially increase if Britain moved in the direction of free trade.

Who benefits from the increased productivity that is the end result of free trade? Everyone, according to Smith, but especially the great body of the people—that is, the poor. For many reasons, Smith is impatient with those who look back in nostalgia to a traditional society, where a landed aristocracy rules. The old order, he continually argues, was rarely benign, for the ruling classes were often violent and generally callous. "All for ourselves, and nothing for other people," he says, "seems, in every age of the world, to have been the vile maxim of the masters of mankind." But he is less opposed to such traditional societies because he dislikes traditional ruling classes than because such societies usually have stable or stagnating economies. The poor suffer in such societies because there is an excess of labor; the peasant must be content with his condition in life, a condition that he can rarely change. He must submit to the vagaries of his master. In a "progressive" state, however, the peasant can improve his condition, since different people are bidding for his labor. In such a progressive state, as Hume said, people are roused from their lethargy and are "put into a fermentation." In such a progressive state, Smith

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says, "the liberal reward of labour . . . increases the industry of the common people."

The progressive state, he continues, "is in reality the cheerful and the hearty state to all the different orders of the society. The stationary is dull; the declining melancholy." Preoccupied with bettering their condition, people in progressive states are less likely to become embroiled in matters of opinion. Preoccupied with bettering their condition, their industry generates a national productivity that redounds to the benefit of everyone. Smith is pro-business because he is pro-consumer. "Consumption," he says, "is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer."

Smith is pro-business, yet he continually attacks businessmen. Merchants and manufacturers, he argues, are not naturally or inevitably pro-consumer: They are more likely than not to be "protectionist." "In the mercantile system the interest of the consumer is almost constantly sacrificed to that of the producer; and it seems to consider production, and not consumption, as the ultimate end and object of all industry and commerce." Under the mercantile system, moreover, it is the producers whose interest "has been so carefully attended to" and the consumers' interest "has been entirely neglected." Since merchants and manufacturers are possessed by "mean rapacity" and the "monopolizing spirit," Smith warns legislators that "the proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention." According to Smith, the wealth of the nation suffers if the demands of merchants and manufacturers are acceded to, for they generally want to restrict competition and trade in order to maximize profits.

The dynamics of a commercial society, it would seem, are shot through with contradiction. For Smith argues that commercial men are forever trying to impede commerce—not only merchants and manufacturers but also skilled laborers, who form "corporations" to restrict entry into their trades. "As it is the interest of the freemen of a corporation to hinder the rest of the inhabitants from employing any workmen but themselves, so it is the interest of the merchants and manufacturers of every country to secure to themselves the monopoly of the home market." How, then, can Smith exhort legislators to "trust people with the care of their own in-

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terest" when most people see it as being in their interest to restrict commerce? Self-interest, it would seem, clashes with the public interest, since self-interest lies in restricting commerce whereas the wealth of the nation lies in free trade.

Smith tries to get around this problem by implying that men do not always know what is in their self-interest. Restricting commerce, he argues, may seem to be in their self-interest, but in the long run it is not. For free trade is in the self-interest of all Englishmen insofar as all Englishmen are consumers. Smith speaks of the "futile interests of our merchants and manufacturers"—futile in the sense that restricting trade ultimately damages their interests rather than aids them. Smith argues that the "real interests," as he says, of the merchants and manufacturers coincide with the public interest, but he doubted very much that they would be capable of understanding their "real interests," for they were imbued with "the meanness of mercantile prejudice."

Legislators and the common good

The Wealth of Nations, however, was written less for merchants and manufacturers, whom Smith generally regards as hopelessly narrow-minded on these questions, than for legislators. Legislators, he felt, could be persuaded that the public interest lies in breaking the bonds of mercantilism, and he hoped his book would help them resist the arguments of merchants and manufacturers. In one of the most powerful passages in *The Wealth of Nations,* Smith castigates merchants and manufacturers for intimidating the legislature. The member of parliament who supports their proposals for regulating commerce:

> is sure to acquire not only the reputation of understanding trade, but great popularity and influence with an order of men whose numbers and wealth render them of great importance. If he opposes them, on the contrary, and still more if he has authority enough to be able to thwart them, neither the most acknowledged probity, nor the highest rank, nor the greatest public services, can protect him from the most infamous abuse and detraction, from personal insults, nor sometimes from real danger, arising from the insolent outrage of furious and disappointed monopolists.

The legislator, Smith says, should take "an extensive view of the general good. . . ." By doing so, he would come to recognize the harm done to the nation by the regulation of commerce, whether it be in the interest of business or labor. "Every such regulation,"

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he says, "introduces some degree of real disorder into the constitution of the state, which it will be difficult afterwards to cure without occasioning another disorder."

Like Hume, Burke, and Publius, Smith regards the legislator as the central figure of the polity. Speaking of Smith's "science of politics," Dugald Stewart argued that it aimed at improving society "not by delineating plans of new constitutions, but by enlightening the policy of actual legislators." Commerce makes it possible for free governments to avoid violent factions, but free governments cannot endure without strong legislatures—legislatures composed of men who are the "natural aristocracy" of the country. Warning the British parliament about the dangers of undermining the colonial assemblies in America, Smith says: "Upon the power which the greater part of the leading men, the natural aristocracy of every country, have of preserving or defending their respective importance, depends the stability and duration of every system of free government." The sentiment is one of which Hume, Burke, and Publius would have approved.

Indeed, the road from Hume and Smith to the authors of *The Federalist* is direct. Although Hamilton and Madison, unlike Hume and Smith, supported a republican form of government, all four were in favor of a strong national government—one in which national legislators would deliberate about the claims of special interests while always keeping in mind the need to foster a progressive economy. In an extended commercial republic, Publius says in *Federalist* 12, "the assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer—all orders of men look forward with eager expectation and growing alacrity to this pleasing reward of their toils." In short, they look to their interests, which would make it less likely that they would be driven by "a zeal for different opinions concerning religion, concerning government, and many other points, as well as speculation as of practice. . . ." Hamilton and Madison, as we know, went their separate ways in the 1790's, but in the 1780's Madison had supported policies that were essentially the same as Hamilton's. So certain was Hamilton of Madison's support that when he learned in 1790 that Madison was going to oppose the measures he recommended in his *Report on Public Credit,* he was truly shocked. Had he known that Madison was going to oppose him, he confided to friends, he would not have accepted the post of Secretary of the Treasury.

Madison's disapproval of Hamilton's policies did not mean that

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he had come to question the wisdom of Hume and Smith. It meant, rather, that he thought Hamilton was unduly favoring one interest —the moneyed interest—at the expense of the other interests in the country. Hamilton's policies, he thought, would abet civil discord by making sectional rivalries even worse than they had been. A letter written in 1828 makes it clear that Madison's views have much in common with Hume's and Smith's. Admitting that "in all doubtful cases, it becomes every Government to lean rather to a confidence in the judgment of individuals, than to interpositions controlling the free exercise of it," Madison then qualifies the theory of "let us alone" (laissez-faire) by saying that at times—usually for reasons of national security—laissez-faire is inappropriate. And he concludes by arguing that the power granted to Congress to regulate commerce was "properly granted, inasmuch as the power is, in effect, confined to that body, and may, when exercised with a sound legislative discretion, provide the better for the safety and prosperity of the nation." For all their differences, Hamilton and Madison should be regarded as statesmen who tried to adapt the views of Hume and Smith to the new American polity's needs.

Yet Hamilton, some would say, seems less to adapt Smith's views than to transform them altogether. For Hamilton has often been regarded as a mercantilist, as an apostle of big government. True, Hamilton did not favor free trade, but he agreed with Smith that the wealth of a nation should be measured by its productivity. And he hoped that his policies would enable the United States to have a progressive economy. In general, he was in favor of laissez-faire. "This favorite dogma," he said, "when taken as a general rule, is true." But he added that "as an exclusive one, it is false, and leads to error in the administration of public affairs." Smith would have agreed. And Smith would also have agreed with Hamilton's strong conviction that the United States could not have a progressive economy unless it had a strong central government.

Both Smith and Hamilton felt strongly about their prescriptions, yet both were too well-read in history and too aware of the complexities of politics to assume that their prescriptions, if followed, would definitely be effective. In *The Wealth of Nations* Smith questions the notion that a "political body" can thrive and prosper only under a certain precise regimen. Both Smith and Hamilton, moreover, harbored a certain disdain for commerce and commercial men. Hamilton was by temperament aristocratic; he was out for glory and honor, and his chief interest was military affairs. Smith was less enamored of aristocratic virtues, but he was

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such a judicious writer that anyone wanting to construct a case against predominantly commercial societies can glean a good deal of supporting evidence from *The Wealth of Nations.* What could be more devastating as a criticism of commerce than Smith's remark that in civilized societies—that is, predominantly commercial societies—"all the nobler parts of the human character may be, in a great measure, obliterated and extinguished in the great body of the people"?

According to Smith, the division of labor transforms the nature of work, making it into a dull and mindless routine. As a result, the worker "generally becomes as stupid and ignorant as it is possible for a human creature to become." Not only his understanding, but also his body is corrupted, for he becomes "incapable of exerting his strength with vigour and perseverance. . . ." In short, he is neither a good citizen nor a good soldier. In civilized societies, moreover, the rich are also corrupted; their understanding may become more refined, but they lose the martial spirit. In such societies, Smith says, "the natural habits of the people render them altogether incapable of defending themselves." Smith, then, had grave reservations about the invisible hand of the free market. "Some attention of government," he says, "is necessary in order to prevent the almost entire corruption and degeneracy of the great body of the people." Far from thinking, as Schlesinger says, that the private market can resolve "our social and economic perplexities," Smith strongly insisted that the government must do many things to mitigate the bad effects of commerce—must, among other things, provide for public education as well as find ways to foster the martial spirit.

Despite his grave reservations about the effects of commerce, Smith recommended the expansion of commerce. Why? Because the good effects of commerce outweighed the bad. Or, rather, the bad effects of commerce could be mitigated by government. The good effects were clear: Commerce promotes "the public tranquility," and fosters a progressive economy that, above all, betters the condition of the great body of the people. "No society," Smith says, "can surely be flourishing and happy, of which the far greater part of the members are poor and miserable." To be opposed to commerce, Smith makes clear, is to be opposed to bettering the condition of the poor. What can be said of Smith can generally be said of Hume, Madison, and Hamilton. All four writers thought that commerce would promote—as Madison said—"the safety and prosperity of the nation."

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Were they right? To pose the question in this way, of course, makes it impossible to answer; we can only speculate about what the United States would have become if the Constitution had not been ratified and if the United States had remained a predominantly agricultural society. Hamilton's own career, moreover, makes it difficult to focus on the question of commerce and republican government, because by the late 1790's the French Revolution had worked its spell over him, transforming him into the leading force in a party of principle, a party obsessed with rooting out American Jacobins. By the late 1790's he was less an 18th-century scientist than a 19th-century ideologue, for the French Revolution profoundly affected the nature of intellectual discourse in Europe and America. These and other problems arise when we try to assess the predictions of Hume, Smith, Hamilton, and Madison, but we need to come to some conclusion despite these difficulties. We need, that is, to risk a simple answer to the question: Have the predictions of Hamilton and Madison been relatively accurate? Or, to put it another way, we need to know whether the extended commercial republic that the United States became has fostered "the safety and prosperity of the nation."

To most Americans, the answer has always seemed clear: It has. The scientists were right in their predictions, for the American polity has been strong and stable—the public tranquility deeply disturbed only by two intractable problems for which Hamilton and Madison had no prescription: the problem of slavery and the problem of native Americans. And the American polity has enabled the great body of the people to better their condition.

Eternal longings

Some Americans, of course, have not been persuaded. Intellectual descendants of Jefferson, rather than Madison and Hamilton, they tend to cast a suspicious eye on the national legislature and on all large-scale industrial enterprises. Jefferson never accepted the modifications in republican theory advanced by the 18th-century political scientists. He thought republican virtue could only be nourished in predominantly agricultural societies, where man depends for his living on himself, not on other men. Jefferson's vision, Merrill Peterson says, was essentially a conservative one, yet at the time it was in some ways more in tune with the American temper than Hamilton's and Madison's. "Only in the longer run of history," Peterson adds, "would it seem archaic."

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Archaic or not, Jefferson's vision is very much in the American grain—the vision of Mugwumps and populists, Brahmins and agrarians. It is a vision that has—with few exceptions—dominated American letters. Those under the spell of this vision, which can only loosely be called Jeffersonian, have looked back in nostalgia to an older order, when disinterested patriots supposedly flourished; and they have continually attacked politicians and leading businessmen. According to many populists, conservatives, and socialists, something happened to America after the Civil War, when Jefferson's vision became archaic. The old order disappeared, and America sank into the corruption of the Gilded Age. After the Civil War, according to Robert Penn Warren, the "'business ethic' became triumphant in American life...." Would Lincoln and Grant (the Grant who was a great general), Warren speculates, "happily accept citizenship in a nation that sometimes seems technologically and philosophically devoted to the depersonalization of men?" That is, would they accept citizenship in a country devoted to the "business ethic"?

The idea that the Gilded Age constitutes a watershed in American life is pervasive. For most novelists, essayists, and journalists, it stands for the decay of the old order and the triumph of greed, vulgarity, and a mindless devotion to progress. Some historians take an even more negative view. According to Lawrence Goodwyn, a leading historian of populism, the Gilded Age turned America's liberal democracy into a society dominated by the "ethos of corporate privilege." And Americans still suffer, Goodwyn says, from "the continuing cultural power exerted by the political and economic values which prevailed in the Gilded Age...."

Now, even Hamilton and Madison would have disliked some of the features of the extended commercial republic after the Civil War—disliked especially those who worshipped at the altar of laissez-faire, extolling the virtues of the invisible hand while ignoring Smith's description of what the division of labor does to the worker. Yet it would be wrong to make too much of the ideology of laissez-faire, for it was only in the ascendant approximately 25 years after the Civil War, becoming an all but spent force by the time of the Great Depression. The doctrine of simple laissez-faire was always repugnant to most Americans—but most Americans did *not* think laissez-faire rendered the notion of an extended commercial republic illegitimate. Even before the Civil War, most Americans, according to Tocqueville, enjoyed "explaining almost every act of their lives on the principle of self-interest properly under-

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stood." Despite their suspicion of big business, after the Civil War most Americans continued to be in favor of the "business ethic." Although their talk—especially during political campaigns—smacked of the older patriotism, it was a language designed, as David Brion Davis has said, to give a new coalition of interests "equal access to the rewards of national growth." From time to time Americans espoused Jeffersonian sentiments, but that did not prevent them from pursuing their interests in the way the authors of *The Federalist* had envisioned—pursuing their interests in the hope of bettering their condition.

Were they foolish to think that they could better their condition? Some populists and conservatives (and socialists) think so; they imply that big business, in league with corrupt politicians, has made the American Dream just that—a dream. Yet even if many specific criticisms of politicians and big businessmen are justified, it makes little sense to say that these forces have made life miserable for most Americans. In the eyes of the great body of the poor throughout the world, the United States has been a success. In the late 19th century, in the middle of the Gilded Age, millions of immigrants came to the United States—came, for the most part, from predominantly pre-industrial and authoritarian countries: Poland, Russia, Italy, and Ireland. One hundred years later they continue to come—from Haiti, Mexico, Vietnam, Cuba—because they still think that the United States is a land of opportunity, a relatively stable country where they are free to pursue their interests. Nowhere was Hamilton more prescient than when he said in his *Report on Manufactures* that the development of American commerce and manufacturing would promote migration to America from foreign countries.

Madison and Hamilton, then, were right to assume that the progressive economy generated by an extended commercial republic would foster a prosperity that would redound to the benefit of all groups—always keeping in mind that blacks and native Americans constitute an important and tragic exception to these predictions. Madison and Hamilton were also right to assume that the progressive economy generated by an extended commercial republic would make civil discord less likely. Aside from the Civil War and the numerous Indian wars, the United States has been the scene of little protracted civil violence. (For complex reasons, the United States has had a very high level of personal violence.) Moreover, the notion that commerce fosters political stability has become widely accepted. Writing about ethnically-diverse Yugoslavia, a re-

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porter in *The New York Times* recently said: "More than anything else, the ability to earn money and spend it is the cement that holds the country together."

Hamilton and Madison—as well as Hume and Smith—were, however, skeptical observers of the human condition who knew from their reading of history that polities are subject to innumerable misfortunes. One never knows when a zeal for different opinions will infect a polity, making its citizens disposed to vex and oppress each other. Man is far from perfectible, they knew, but they did think man is malleable—and that commerce would encourage the development of certain characteristics while it would discourage others. And these characteristics—among them, moderation, thrift, calculation, and compromise—would tend to make polities more stable. Smith did not think that everyone had the soul of a Scotsman, but he thought it would be better if most citizens did.

Most, not all. All four writers were quite aware that such characteristics are not ennobling, not even wholly admirable. The bourgeois virtues—all set in motion by self-interest—are not heroic virtues, not the stuff of great literature. All four writers stressed the need for commercial men but saved their praise for great statesmen, soldiers, philosophers, and legislators. "The greatest and noblest of all characters," Smith says in *The Theory of Moral Sentiments,* is "that of the reformer and legislator of a great state." They themselves were driven by uncommercial ambition: Hume and Smith aspired to be great philosophers, whereas Hamilton and Madison aspired to be great statesmen (Hamilton also wanted to be a great soldier). All four writers believed in what might be called a two-track system. On the one hand, there would be a "natural aristocracy," which would be less interested in bettering its condition than in achieving lasting fame; on the other hand, there would be a commercial class chiefly preoccupied with economic gain. The two groups would complement each other; both were necessary for the stability and prosperity of the nation. Moreover, only a predominantly commercial society could foster a truly *natural* aristocracy—that is, a meritocracy—for in traditional, preindustrial societies the talents of those who belong to the lower orders of society often remain hidden.

The vision of Hume, Smith, Madison, and Hamilton was sober, but it was also hopeful: Man could improve his condition. Unfortunately, it was not a compelling vision, not a vision rich in great expectations. And it gave too much place to a figure innumerable writers and philosophers found—at the very least—distasteful: com-

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mercial man. In the 19th century, a host of novelists, poets, essayists, and philosophers attacked commercial man as mean, hypocritical, insipid, callous, and vulgar. From very different perspectives, Nietzsche and Marx attacked the triumph of commercial man. Nietzsche hoped for the coming of a "superman," a man whose virtues were, in the best sense, aristocratic; and Marx hoped that abolition of private property would transform man into a completely social being, one who would no longer be in conflict with his fellow men. Both Nietzsche and Marx scorned a society predominantly composed of men pursuing their self-interest. Even in Smith himself there is a certain amount of scorn for commercial man, a scorn that is evident when he speaks of "a nation of shopkeepers." Though Smith defended commerce, he often found himself exasperated by commercial man.

Against politics

In the 20th century we have seen the dreams of Nietzsche and Marx become the nightmares of Nazi man and socialist man. As Pascal said, "man is neither angel nor beast, and the misfortune is that whoever tries to play the angel ends up playing the beast." Despite the events of the past 50 years, notions of a new man—a man untainted by self-interest—still hold some attraction. After quoting Mao's remarks about the need to "remold people to their very souls" and the need to "fight self," Charles Lindblom in his influential *Politics and Markets* says that Mao's vision is "on some counts as humane as any other great vision of man in the history of human aspiration," and he adds that "the vision of an 'educated' citizenry is appealing on many counts—on some points more so than the vision of market man. . . ." The vision of disinterested man still enthralls some intellectuals, though they never say that they would like to be "educated" in Maoist fashion. And this vision, I would argue, makes them inclined to dismiss the claims of "special interests"—groups, after all, driven by self-interest.

Most critics of special interests do not want a new American man who is a Maoist, but they do want a new American man who is driven by a disinterested sense of the public interest. "I don't think you can have a new type of politics," Ralph Nader has said, "unless you have a new type of citizenship." Nader has not been very precise about what this new citizen would do, but he has said "the basic point . . . is to develop what in ancient Athens was called the public citizen." In other words, Americans should spend

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much more time than they now do on political affairs—not necessarily by running for office, however, because Nader continually suggests that being a politician is corrupting: "To my mind, politics is too full of compromises that should not be made." What Nader, and indeed most public interest groups, mean by political participation is an active and aroused citizenry that strongly distrusts its legislators—a citizenry afflicted with what Smith would call that "troublesome jealousy, which, in some modern republics, seems to watch over the minutest actions, and to be at all times ready to disturb the peace of every citizen." Republican jealousy was precisely the affliction that Hamilton and Madison were most worried about, and they hoped that in the new kind of republic they proposed—both extended and commercial—republican jealousy would wither away.

It never did. Republican jealousy—both in its populist and patrician forms—has been a continuing strain in American political history. Republican jealousy, its defenders say, keeps politicians honest; and it prevents corruption from completely dominating the political process. To some degree, they are right. Although the "great decisions" of American political history cannot be explained by invoking the spectre of special interests, it is probably true that special interests have unduly shaped many legislative decisions. Yet if special interests are often part of the problem, they are also part of the solution—a point that is rarely acknowledged. Publius says that the claims of various and interfering interests should be regulated, not dismissed. These interests, he implies, are perfectly right to pursue their self-interest.

In any case, our "public citizens" have usually not been effective in limiting the influence of special interests. Distrusting professional politicians, both patrician and populist reformers have advocated changes that have weakened the party system, thereby making it *more* difficult for national legislators to withstand the importunities of special interests.

Reading *The Wealth of Nations,* Hamilton and Madison were probably struck by Smith's remark that "in free countries, where the safety of government depends very much upon the favourable judgment which the people may form of its conduct, it must surely be of the highest importance that they should not be disposed to judge rashly or capriciously concerning it." Many Americans, Hamilton and Madison knew, were quick to condemn their legislators, quick to accuse them of less than noble motives; and in *The Federalist* they tried to persuade these Americans that the price of

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such obsessive vigilance was a weak central government that ultimately would unravel, leading to violent faction. They succeeded; and yet in some ways it seems as if they did not, for many Americans have remained prone to condemn legislators for being corrupted by special interests.

But few Americans, I imagine, would be entranced by Nader's anti-commercial vision of an America of self-sufficient communities, where citizens "can grow their own gardens. . . ." Few Americans, I imagine, prefer a stable to a progressive economy. And few Americans, I suspect, are truly consumed by republican jealousy. Perhaps most Americans sense that the cry of "special interests" is often demagogic in intent—a phrase invoked to prevent deliberation, to cast judgments without coming to grips with substantive questions. And perhaps most Americans also sense that many of those who resort to such a rallying cry have more often than not been men of little faith in America's distinctive form of republican government: an extended commercial republic.

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A Response to "The American Energy Debate"

We refer to Robert S. Pindyck's discussion of our book, *Energy Future*, in his essay, "The American Energy Debate" (*The Public Interest*, Spring 1980). We are sure there is ample material in our book that can be criticized. We regret, however, that Mr. Pindyck chose to criticize the book for material that it does not contain. Indeed, he attributes statements to us that, in fact, do not appear in the book.

1) Mr. Pindyck states that we say that a reduction in U.S. oil imports would cause non-OPEC oil-producing countries to raise their production. Such an argument simply does not appear in any form in *Energy Future*.

2) Mr. Pindyck says that we argue that a reduction in U.S. oil imports would lead to substantial cuts in oil prices. We do not say that. We say that it would help to stabilize the market, which apparently Mr. Pindyck believes would be a good thing, since he does declare, "This is not to say that a reduction in our oil imports is not desirable—in fact, it is imperative." This happens to be one one of the major contentions of *Energy Future*.

3) Furthermore, Mr. Pindyck uses quotation marks in such a way as to imply that certain quotations were taken directly from our book, when, in fact, they do not appear in the book and are not part of our argument. For example, he attributes the following conclusion to us, placing it in quotation marks: "There is little or no more gas or oil to be found in the United States." In contrast, our book states, "The United States will be fortunate if it finds enough new oil and gas to keep production at current levels." We go on to say that perhaps four million barrels a day of production in 1990 will come from reserves not yet found!

4) Another quotation that Mr. Pindyck appears to attribute to us is: "Solar energy would be cheap if only the government would get behind it." This quotation appears in no place in *Energy Future*. We do favor a program of federal incentives for solar energy because it is competing against conventional energy supplies that are sold to consumers at subsidized prices because of government regulations, to accelerate the society's knowledge as to the economic and engineering potential of renewable energy sources, and to overcome a number of institutional obstacles.

5) Mr. Pindyck further states that we claim that the cost of solar-generated power would fall precipitously after solar energy

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got going. His statement is in marked contrast to our book. We explicitly do not offer much hope for solar-generated power and indeed are critical of the tilt in the Federal R&D budget toward this kind of high-technology solar project.

6) Contrary to Mr. Pindyck's mistaken summary, *Energy Future* does not hold out an easy panacea for America's energy ills. Nor do we recommend a fuel mix that is artificially imposed. Our major theme is to get the signals correct to the consumer and then let the market work. All energy sources should have the opportunity to compete on a fair basis. To the extent that it is politically unacceptable to raise market prices for conventional energy supplies to their replacement costs, then the "theory of the second best," which should be known to all economists, argues that the economy will work most efficiently if subsidies comparable to those existing for conventional energy sources are also given.

—Robert Stobaugh and Daniel Yergin

Robert S. Pindyck replies:

In my essay "The American Energy Debate," I discuss what I consider to be myths about energy in the United States, myths that I feel are promoted in *Energy Future*. In putting my statement of each myth in quotation marks (and italics) I never intended to imply that they were literal quotations taken directly from *Energy Future*, and I apologize if some readers made the wrong inference. However, I *did* intend to imply, and I still do, that they represent major themes or arguments in the book.

I find Professor Stobaugh's and Mr. Yergin's comments somewhat surprising. However, let me try to address their concerns point-by-point.

In reference to their first two points, pages 48-54 of *Energy Future* indeed make the claim that there is a strong link between U.S. oil imports, the imports of other countries, and the world price of oil. Referring to the diagram and "description of forces" on page 48, the book claims that an increment of 5 million barrels per day (mb/d) of U.S. imports will "affect policies in the other industrial nations so their imports rise 5 million barrels daily." (I divided by 5 to put things in terms of a 1 mb/d change). Admittedly the book does not claim that all of this will come about from changes in energy production—part is supposed to come from a change in demand, brought about by conservation policies. The only argument made in support of the link itself is essentially that (p. 50) "the United States, with its large market and by its allocation of resources, can make or break various energy options."

As to the link with oil prices, this is stated very clearly on page 50. The 5 mb/d increment in U.S. imports, having been matched by the 5 mb/d increment in imports of other countries, means a 10 mb/d increment in OPEC exports, and this in turn is supposed to lead to a price increment of $6 per barrel (i.e., something over $1 per barrel for each 1 mb/d increment in U.S. imports). The

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book arrives at this figure on page 50 claiming that a 30 mb/d level of OPEC exports is consistent with a $15 price, while with a 40 mb/d level, the price "is assumed to be" $21. (As to the meaningfulness of these calculations, I would only point out that currently OPEC exports are below 30 mb/d, while the price is around $35.)

Energy Future never states that "there is little or no more gas or oil to be found in the United States" in exactly those words, but at the very least it is an implicit theme of the book, and is used as an argument in support of subsidies for such things as solar energy. For example, page 42 states: "Even if price controls are completely eliminated . . . production of oil from existing fields would likely decline from the existing level of 10 million barrels daily." Then, in italics, *"It is unlikely that U.S. production in the late 1980's will include more than 4 million barrels daily of oil from new fields found between 1978 and the late 1980's. And even this is a high estimate."* And on page 46, "The important point to remember is that there is no domestic oil solution to the problem of increasing U.S. oil imports." Or on page 78, "The essential point is that the nation should not plan on greater quantities of natural gas to stop the rise in oil imports." The authors of *Energy Future* may be right in their assessment of future domestic oil and gas supplies, or they may be wrong. The point of my essay is that time will tell—*if* economics determines the fuel mix of the future.

As for solar energy, it is indeed a theme of the book that its cost will fall if the government got behind it. The book argues that an objective of government policy should be to "create a market by federal purchases to drive present technology to lower costs" (page 210). And how will the cost fall? The book explains (page 196) that "the problem is to get over the sluggish first phase, and then allow the innovation to proceed on its own momentum."

Taking photovoltaics as an example, future cost reductions are likened to the drop in the cost of transistors resulting because of "the space program's need for lightweight, reliable electronic amplifiers" (page 208). The claim is then made (page 210), without even anecdotal supporting evidence, that "investments in research will produce fundamentally new production techniques that could lead to even lower costs." And, "If only a part of the $2 billion of federal funds slated for the Clinch River breeder reactor were directed instead to photovoltaic purchases, the $1,000 per-peak-kilowatt price could be achievable very soon." (This would mean a drop in cost to about one-tenth its current level.) If only we could believe this!

Where I do agree with *Energy Future* is over the importance of reducing our dependence on OPEC imports. As Chapter 2 of the book so clearly explains, much of our imported oil comes from sources that are inherently unstable and unreliable. Because of the possibility of disruptions, the social cost of an incremental barrel of oil is indeed higher than the world price (although not

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by $40 to $100 as *Energy Future* claims). But I do *not* agree that this means that solar energy (or synthetic fuels) should be subsidized. Instead, it calls for a strategic stockpile, in combination with a *tariff on imported oil.* A tariff would raise the domestic price for both consumers and producers, leading to reduced demand, and an increase in energy production based on an *economically efficient* choice of sources and technologies. Indeed, this would achieve what in the last paragraph of their letter Professor Stobaugh and Mr. Yergin say is their major theme: "to get the signals correct to the consumer and then let the market work."

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